

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 797 (Chapter #33)
Author: Ridley-Thomas
Bill Date: April 24, 2008, amended
Subject: VE/P Extension
Sponsor: Author
Board Position: Support MBC Provisions

DESCRIPTION OF LEGISLATION:

This bill carries our extension of the Health Quality Enforcement Section within the Department of Justice which is responsible for investigating and prosecuting proceedings against licensees and applicants within the jurisdiction of the Medical Board (Board) and various other boards.

This bill specifies that an investigator is not under the supervision of the deputy attorney general who is simultaneously assigned to a complaint. The bill requires the Board to increase its computer capabilities and compatibilities with the Health Quality Enforcement Section and to establish and implement a plan to locate its enforcement staff and the Health Quality Enforcement Section in the same offices. The bill requires the Board, in consultation with specified agencies, to report and make recommendations to the Governor and the Legislature on this enforcement and prosecution model by July 1, 2009.

IMPLEMENTATION:

- Notify stakeholders
- Continue moving forward with Board approved BCP's
- Continue collecting statistics for July 1, 2009 report.
- Evaluate office leases as they come up for renewal/expiration to determine co-location opportunities.

FISCAL: Within existing resources.

POSITION: Support MBC provisions.

July 17, 2008

Senate Bill No. 797

CHAPTER 33

An act to amend Sections 490, 1616.5, 2006, 2531.75, 2847, 3041.3, 4982, 4989.54, 4990.32, 4992.3, 5552.5, 7028, 7303, 8005, 22258, and 22259 of and to add and repeal Sections 101.2 and 7303.5 of, the Business and Professions Code, and to amend Sections 12529, 12529.5, 12529.6, and 12529.7 of the Government Code, relating to professions and vocations, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 23, 2008. Filed with
Secretary of State June 23, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 797, Ridley-Thomas. Professions and vocations.

(1) Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to suspend or revoke a license on certain bases, including the licensee's conviction of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

This bill would specify that this authorization to suspend or revoke a license is in addition to any other action that a board is permitted to take against the licensee.

(2) Existing law establishes the Dental Board of California, the Speech-Language Pathology and Audiology Board, the Board of Vocational Nursing and Psychiatric Technicians, and the Board of Barbering and Cosmetology in the Department of Consumer Affairs. Existing law authorizes the Dental Board of California and the Speech-Language Pathology and Audiology Board to appoint executive officers, requires the Board of Vocational Nursing and Psychiatric Technicians to select an executive officer, and requires the Board of Barbering and Cosmetology to appoint an executive officer, as specified. Under existing law, the provisions establishing these boards and their authority to appoint or select executive officers will become inoperative on July 1, 2008, and be repealed on January 1, 2009.

This bill would extend the inoperative and repeal dates for the provisions relating to the boards' appointment of executive officers to January 1, 2012. The bill would delete the requirement that the Board of Vocational Nursing and Psychiatric Technicians and the Board of Barbering and Cosmetology appoint or select executive officers, and would instead authorize those boards to do so. The bill, until January 1, 2009, would provide that, if any of these boards becomes inoperative or is repealed, the Governor shall succeed to the authority of that board to appoint an executive officer and the executive

officer of that board shall have the same administrative duties with regard to the bureau replacing the board as it had with regard to the board, and would authorize the Department of Consumer Affairs to create an advisory committee with specified members to advise and direct the executive officer.

(3) Existing law, the Architects Practice Act, establishes the California Architects Board and provides for its licensure and regulation of architects. Under existing law, the board is authorized to implement an intern development program until July 1, 2009.

This bill would extend the authority of the board to implement this program to July 1, 2011.

(4) Existing law provides for the certification of optometrists to diagnose and treat certain conditions of the human eye or its appendages, and to use therapeutic pharmaceutical agents. It requires the board to decide all issues relating to the equivalency of an optometrist's education or training for certification, as specified.

This bill would delete an obsolete reference to the Therapeutic Pharmaceutical Agent Advisory Committee.

(5) Existing law, the Contractors' State License Law, creates the Contractors' State License Board within the Department of Consumer Affairs and provides for the licensure and regulation of contractors. Existing law makes it a misdemeanor for any person to engage in the business or act in the capacity of a contractor without having a license, and subjects a person who violates this prohibition to specified fines and imprisonment.

This bill would apply specified penalty provisions to a person named on a revoked license and held responsible for the act or omission resulting in the revocation.

(6) Existing law provides for the licensure or registration, and regulation of marriage and family therapists, licensed educational psychologists, and clinical social workers by the Board of Behavioral Sciences. Under existing law, the board may refuse to issue a registration or license, or may suspend or revoke a license or registration, if the applicant, registrant, or licensee has been guilty of unprofessional conduct, as specified. Existing law authorizes the board to file a specified accusation against these licensees or registrants within certain limitations periods for, among other things, an alleged act or omission involving a minor that is the basis for disciplinary action.

This bill would specify that unprofessional conduct includes engaging in specified acts with a minor regardless of whether the act occurred prior to or after the time the registration or license was issued by the board, and would apply this provision to acts that occurred prior to the effective date of the bill. The bill would also specify that, if after the limitations periods have expired, the board discovers a specified alleged act with a minor, and there is independent evidence corroborating the allegation, an accusation shall be filed within 3 years from the date the board discovers that alleged act.

(7) Existing law imposes specified requirements and prohibitions on tax preparers, as defined, and exempts specified persons from these requirements

and prohibitions. A violation of those provisions is a misdemeanor. Under existing law, those provisions will become inoperative on July 1, 2008, and will be repealed on January 1, 2009.

This bill would extend the inoperative and repeal dates for these provisions, making the provisions inoperative and repealing them on January 1, 2012. The bill would also expand the category of persons exempted from these provisions and revise the requirements for exemption, including imposing a requirement that specified tax returns are signed by a licensed accountant, attorney, or by a person who is enrolled to practice before the Internal Revenue Service. The bill would also specify that preparation of a tax return includes the inputting of tax data into a computer. Because this bill would impose additional qualifications on the exemption from tax preparer provisions, the violation of which would be a crime, and would extend the operation of existing crimes provisions, it would impose a state-mandated local program.

(8) Existing law authorizes the Court Reporters Board to, among other things, appoint an executive officer and employ other employees as may be necessary. These provisions will become inoperative on July 1, 2008, and be repealed on January 1, 2009.

This bill would extend those dates, making the provisions inoperative and repealing them on January 1, 2012.

(9) Existing law creates the Health Quality Enforcement Section within the Department of Justice with the primary responsibility of investigating and prosecuting proceedings against licensees and applicants within the jurisdiction of the Medical Board of California and various other boards. Existing law requires that attorneys staff the intake unit of specified regulatory boards to evaluate and screen complaints and develop uniform standards for their processing. Existing law also simultaneously assigns a complaint received by the medical board to an investigator and a deputy attorney general in the Health Quality Enforcement Section, and provides that, for the duration of the assignment, the investigator is under the direction of the deputy attorney general. Existing law makes these provisions inoperative on July 1, 2008, and repeals them on January 1, 2009, unless a later enacted statute deletes or extends those dates. Existing law also requires the medical board, in consultation with specified agencies, to report and make recommendations to the Governor and the Legislature on this prosecution model by July 1, 2007.

This bill would make those provisions inoperative on July 1, 2010, repeal them on January 1, 2011, and would make other related changes. The bill would specify that an investigator is not under the supervision of the deputy attorney general simultaneously assigned to a complaint. The bill would require the medical board to increase its computer capabilities and compatibilities with the Health Quality Enforcement Section and to establish and implement a plan to locate its enforcement staff and the staff of the Health Quality Enforcement Section in the same offices. The bill would also require the medical board, in consultation with specified agencies, to

report and make recommendations to the Governor and the Legislature on this enforcement and prosecution model by July 1, 2009.

(10) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(11) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 101.2 is added to the Business and Professions Code, to read:

101.2. (a) Notwithstanding paragraph (3) of subdivision (b) of Section 101.1, if the Dental Board of California, the Speech-Language Pathology and Audiology Board, the Board of Vocational Nursing and Psychiatric Technicians, or the Board of Barbering and Cosmetology becomes inoperative or is repealed, both of the following shall apply:

(1) The executive officer of the board shall have the same administrative duties with regard to any bureau replacing the board as he or she had with regard to the board, and shall operate under the direction of the Department of Consumer Affairs.

(2) The Governor shall succeed to the authority of the board to appoint an executive officer pursuant to Section 1616.5, 2531.75, 2847, or 7303.5, respectively.

(b) The Department of Consumer Affairs may create an advisory committee for each bureau described in subdivision (a) to advise and direct the bureau's executive officer. An advisory committee created under this subdivision shall consist of the prior members of the board, and the committee shall be subject to the per diem provisions related to the prior board and to all procedural requirements governing the actions of the prior board.

(c) An advisory committee created pursuant to subdivision (b) shall meet as often as is necessary, as determined by that committee.

(d) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 2. Section 490 of the Business and Professions Code is amended to read:

490. (a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007–08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

SEC. 3. Section 1616.5 of the Business and Professions Code is amended to read:

1616.5. (a) The board, by and with the approval of the director, may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

(b) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date..

SEC. 4. Section 2006 of the Business and Professions Code is amended to read:

2006. (a) On and after January 1, 2006, any reference in this chapter to an investigation by the board, or one of its divisions, shall be deemed to refer to an investigation directed by employees of the Department of Justice.

(b) This section shall become inoperative on July 1, 2010, and as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 2531.75 of the Business and Professions Code is amended to read:

2531.75. (a) The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

(b) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 6. Section 2847 of the Business and Professions Code is amended to read:

2847. (a) The board may select an executive officer who shall perform duties as are delegated by the board and who shall be responsible to it for the accomplishment of those duties.

(b) The person selected to be the executive officer of the board shall be a duly licensed vocational nurse under this chapter, a duly licensed professional nurse as defined in Section 2725, or a duly licensed psychiatric technician. The executive officer shall not be a member of the board.

(c) With the approval of the Director of Finance, the board shall fix the salary of the executive officer.

(d) The executive officer shall be entitled to traveling and other necessary expenses in the performance of his or her duties. He or she shall make a statement, certified before a duly authorized person, that the expenses have been actually incurred.

(e) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 7. Section 3041.3 of the Business and Professions Code is amended to read:

3041.3. (a) In order to be certified to use therapeutic pharmaceutical agents and authorized to diagnose and treat the conditions listed in subdivisions (b), (d), and (e) of Section 3041, an optometrist shall apply for a certificate from the board and meet all requirements imposed by the board.

(b) The board shall grant a certificate to use therapeutic pharmaceutical agents to any applicant who graduated from a California accredited school of optometry prior to January 1, 1996, is licensed as an optometrist in California, and meets all of the following requirements:

(1) Satisfactorily completes a didactic course of no less than 80 classroom hours in the diagnosis, pharmacological, and other treatment and management of ocular disease provided by either an accredited school of optometry in California or a recognized residency review committee in ophthalmology in California.

(2) Completes a preceptorship of no less than 65 hours, during a period of not less than two months nor more than one year, in either an ophthalmologist's office or an optometric clinic. The training received during the preceptorship shall be on the diagnosis, treatment, and management of ocular, systemic disease. The preceptor shall certify completion of the preceptorship. Authorization for the ophthalmologist to serve as a preceptor shall be provided by an accredited school of optometry in California, or by a recognized residency review committee in ophthalmology, and the preceptor shall be licensed as an ophthalmologist in California, board-certified in ophthalmology, and in good standing with the Medical Board of California. The individual serving as the preceptor

shall schedule no more than three optometrist applicants for each of the required 65 hours of the preceptorship program. This paragraph shall not be construed to limit the total number of optometrist applicants for whom an individual may serve as a preceptor, and is intended only to ensure the quality of the preceptorship by requiring that the ophthalmologist preceptor schedule the training so that each applicant optometrist completes each of the 65 hours of the preceptorship while scheduled with no more than two other optometrist applicants.

(3) Successfully completes a minimum of 20 hours of self-directed education.

(4) Passes the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" examination or, in the event this examination is no longer offered, its equivalent, as determined by the State Board of Optometry.

(5) Passes the examination issued upon completion of the 80-hour didactic course required under paragraph (1) and provided by the accredited school of optometry or residency program in ophthalmology.

(6) When any or all of the requirements contained in paragraph (1), (4), or (5) have been satisfied on or after July 1, 1992, and before January 1, 1996, an optometrist shall not be required to fulfill the satisfied requirements in order to obtain certification to use therapeutic pharmaceutical agents. In order for this paragraph to apply to the requirement contained in paragraph (5), the didactic examination that the applicant successfully completed shall meet equivalency standards, as determined by the board.

(7) Any optometrist who graduated from an accredited school of optometry on or after January 1, 1992, and before January 1, 1996, shall not be required to fulfill the requirements contained in paragraphs (1), (4), and (5).

(c) The board shall grant a certificate to use therapeutic pharmaceutical agents to any applicant who graduated from a California accredited school of optometry on or after January 1, 1996, who is licensed as an optometrist in California, and who meets all of the following requirements:

(1) Passes the National Board of Examiners in Optometry's national board examination, or its equivalent, as determined by the State Board of Optometry.

(2) Of the total clinical training required by a school of optometry's curriculum, successfully completed at least 65 of those hours on the diagnosis, treatment, and management of ocular, systemic disease.

(3) Is certified by an accredited school of optometry as competent in the diagnosis, treatment, and management of ocular, systemic disease to the extent authorized by this section.

(4) Is certified by an accredited school of optometry as having completed at least 10 hours of experience with a board-certified ophthalmologist.

(d) The board shall grant a certificate to use therapeutic pharmaceutical agents to any applicant who is an optometrist who obtained his or her license outside of California if he or she meets all of the requirements for an

optometrist licensed in California to be certified to use therapeutic pharmaceutical agents.

(1) In order to obtain a certificate to use therapeutic pharmaceutical agents, any optometrist who obtained his or her license outside of California and graduated from an accredited school of optometry prior to January 1, 1996, shall be required to fulfill the requirements set forth in subdivision (b). In order for the applicant to be eligible for the certificate to use therapeutic pharmaceutical agents, the education he or she received at the accredited out-of-state school of optometry shall be equivalent to the education provided by any accredited school of optometry in California for persons who graduate before January 1, 1996. For those out-of-state applicants who request that any of the requirements contained in subdivision (b) be waived based on fulfillment of the requirement in another state, if the board determines that the completed requirement was equivalent to that required in California, the requirement shall be waived.

(2) In order to obtain a certificate to use therapeutic pharmaceutical agents, any optometrist who obtained his or her license outside of California and who graduated from an accredited school of optometry on or after January 1, 1996, shall be required to fulfill the requirements set forth in subdivision (c). In order for the applicant to be eligible for the certificate to use therapeutic pharmaceutical agents, the education he or she received by the accredited out-of-state school of optometry shall be equivalent to the education provided by any accredited school of optometry for persons who graduate on or after January 1, 1996. For those out-of-state applicants who request that any of the requirements contained in subdivision (c) be waived based on fulfillment of the requirement in another state, if the board determines that the completed requirement was equivalent to that required in California, the requirement shall be waived.

(3) The State Board of Optometry shall decide all issues relating to the equivalency of an optometrist's education or training under this subdivision.

SEC. 8. Section 4982 of the Business and Professions Code is amended to read:

4982. The board may deny a license or registration or may suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. The board may order any

license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using of any of the dangerous drugs specified in Section 4022, or of any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing marriage and family therapy services.

(d) Gross negligence or incompetence in the performance of marriage and family therapy.

(e) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.

(h) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with

a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a marriage and family therapist.

(l) Performing, or holding oneself out as being able to perform, or offering to perform, or permitting any trainee or registered intern under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner that is false, misleading, or deceptive.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any registered intern or trainee by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Performing or holding oneself out as being able to perform professional services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(t) Permitting a trainee or registered intern under one's supervision or control to perform, or permitting the trainee or registered intern to hold himself or herself out as competent to perform, professional services beyond the trainee's or registered intern's level of education, training, or experience.

(u) The violation of any statute or regulation governing the gaining and supervision of experience required by this chapter.

(v) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(w) Failure to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(x) Failure to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(y) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(z) Failure to comply with Section 2290.5.

(aa) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

SEC. 9. Section 4989.54 of the Business and Professions Code is amended to read:

4989.54. The board may deny a license or may suspend or revoke the license of a licensee if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) Conviction of a crime substantially related to the qualifications, functions and duties of an educational psychologist.

(1) The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(2) The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee under this chapter.

(3) A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee under this chapter shall be deemed to be a conviction within the meaning of this section.

(4) The board may order a license suspended or revoked, or may decline to issue a license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty or setting aside the verdict of guilty or dismissing the accusation, information, or indictment.

(b) Securing a license by fraud, deceit, or misrepresentation on an application for licensure submitted to the board, whether engaged in by an applicant for a license or by a licensee in support of an application for licensure.

(c) Administering to himself or herself a controlled substance or using any of the dangerous drugs specified in Section 4022 or an alcoholic

beverage to the extent, or in a manner, as to be dangerous or injurious to himself or herself or to any other person or to the public or to the extent that the use impairs his or her ability to safely perform the functions authorized by the license.

(d) Conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in subdivision (c) or any combination thereof.

(e) Advertising in a manner that is false, misleading, or deceptive.

(f) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(g) Commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee.

(h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory or possession of the United States or by any other governmental agency, on a license, certificate, or registration to practice educational psychology or any other healing art. A certified copy of the disciplinary action, decision, or judgment shall be conclusive evidence of that action.

(i) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a clinical social worker or marriage and family therapist.

(j) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(k) Gross negligence or incompetence in the practice of educational psychology.

(l) Misrepresentation as to the type or status of a license held by the licensee or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(m) Intentionally or recklessly causing physical or emotional harm to any client.

(n) Engaging in sexual relations with a client or a former client within two years following termination of professional services, soliciting sexual relations with a client, or committing an act of sexual abuse or sexual misconduct with a client or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a licensed educational psychologist.

(o) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services or the basis upon which that fee will be computed.

(p) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients.

(q) Failing to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

(r) Performing, holding himself or herself out as being able to perform, or offering to perform any professional services beyond the scope of the license authorized by this chapter or beyond his or her field or fields of competence as established by his or her education, training, or experience.

(s) Reproducing or describing in public, or in any publication subject to general public distribution, any psychological test or other assessment device the value of which depends in whole or in part on the naivete of the subject in ways that might invalidate the test or device. An educational psychologist shall limit access to the test or device to persons with professional interests who can be expected to safeguard its use.

(t) Aiding or abetting an unlicensed person to engage in conduct requiring a license under this chapter.

(u) When employed by another person or agency, encouraging, either orally or in writing, the employer's or agency's clientele to utilize his or her private practice for further counseling without the approval of the employing agency or administration.

(v) Failing to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(w) Failing to comply with the elder and adult dependent abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(x) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(y) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

SEC. 10. Section 4990.32 of the Business and Professions Code is amended to read:

4990.32. (a) Except as otherwise provided in this section, an accusation filed pursuant to Section 11503 of the Government Code against a licensee or registrant under the chapters the board administers and enforces shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitations period provided by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) An accusation alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the grounds for disciplinary action or within 10 years after the act or omission alleged as the grounds for disciplinary action occurred, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.

(e) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (d) shall be tolled until the minor reaches the age of majority. However, if the board discovers an alleged act of sexual contact with a minor under Section 261, 286, 288, 288.5, 288a, or 289 of the Penal Code after the limitations periods described in this subdivision have otherwise expired, and there is independent evidence that corroborates the allegation, an accusation shall be filed within three years from the date the board discovers that alleged act.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

(g) For purposes of this section, "discovers" means the latest of the occurrence of any of the following with respect to each act or omission alleged as the basis for disciplinary action:

(1) The date the board received a complaint or report describing the act or omission.

(2) The date, subsequent to the original complaint or report, on which the board became aware of any additional acts or omissions alleged as the basis for disciplinary action against the same individual.

(3) The date the board receives from the complainant a written release of information pertaining to the complainant's diagnosis and treatment.

SEC. 11. Section 4992.3 of the Business and Professions Code is amended to read:

4992.3. The board may deny a license or a registration, or may suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to

determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter is a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022 or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person who uses or offers to use drugs in the course of performing clinical social work. This provision does not apply to any person also licensed as a physician and surgeon under Chapter 5 (commencing with Section 2000) or the Osteopathic Act who lawfully prescribes drugs to a patient under his or her care.

(d) Gross negligence or incompetence in the performance of clinical social work.

(e) Violating, attempting to violate, or conspiring to violate this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity. For purposes of this subdivision, this misrepresentation includes, but is not limited to, misrepresentation of the person's qualifications as an adoption service provider pursuant to Section 8502 of the Family Code.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.

(h) Aiding or abetting any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client or with a former client within two years from the termination date of therapy with the client, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a clinical social worker.

(l) Performing, or holding one's self out as being able to perform, or offering to perform or permitting, any registered associate clinical social worker or intern under supervision to perform any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner that is false, misleading, or deceptive.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any registered associate clinical social worker or intern by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(t) Failure to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(u) Failure to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(v) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(w) Failure to comply with Section 2290.5.

(x) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

SEC. 12. Section 5552.5 of the Business and Professions Code is amended to read:

5552.5. The board may, by regulation, implement an intern development program until July 1, 2011.

SEC. 13. Section 7028 of the Business and Professions Code is amended to read:

7028. (a) It is a misdemeanor for any person to engage in the business or act in the capacity of a contractor within this state without having a license therefor, unless the person is particularly exempted from the provisions of this chapter.

(b) If a person has been previously convicted of the offense described in this section, unless the provisions of subdivision (c) are applicable, the court shall impose a fine of 20 percent of the price of the contract under which the unlicensed person performed contracting work, or four thousand five hundred dollars (\$4,500), whichever is greater, and, unless the sentence prescribed in subdivision (c) is imposed, the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a jail sentence of less than 90 days for second or subsequent convictions under this section, the court shall state the reasons for its sentencing choice on the record.

(c) A third or subsequent conviction for the offense described in this section is punishable by a fine of not less than four thousand five hundred dollars (\$4,500) nor more than the greater amount of either ten thousand dollars (\$10,000) or 20 percent of the contract price under which the unlicensed person performed contracting work or by imprisonment in a county jail for not more than one year or less than 90 days, or by both that

fine and imprisonment. The penalty provided by this subdivision is cumulative to the penalties available under all other laws of this state.

(d) A person who violates this section is subject to the penalties prescribed in subdivision (c) if the person was named on a license that was previously revoked and, either in fact or under law, was held responsible for any act or omission resulting in the revocation.

(e) In the event the person performing the contracting work has agreed to furnish materials and labor on an hourly basis, “the price of the contract” for the purposes of this section means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

(f) Notwithstanding any other provision of law to the contrary, an indictment for any violation of this section by the unlicensed contractor shall be found on an information or complaint filed within four years from the date of the contract proposal, contract, completion, or abandonment of the work, whichever occurs last.

SEC. 14. Section 7303 of the Business and Professions Code is amended to read:

7303. (a) Notwithstanding Article 8 (commencing with Section 9148) of Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code, there is in the Department of Consumer Affairs the State Board of Barbering and Cosmetology in which the administration of this chapter is vested.

(b) The board shall consist of nine members. Five members shall be public members and four members shall represent the professions. The Governor shall appoint three of the public members and the four professions members. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint one public member. Members of the board shall be appointed for a term of four years, except that of the members appointed by the Governor, two of the public members and two of the professions members shall be appointed for an initial term of two years. No board member may serve longer than two consecutive terms.

(c) The board may appoint an executive officer who is exempt from civil service. The executive officer shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter. The appointment of the executive officer is subject to the approval of the director. In the event that a newly authorized board replaces an existing or previous bureau, the director may appoint an interim executive officer for the board who shall serve temporarily until the new board appoints a permanent executive officer.

(d) The executive officer shall provide examiners, inspectors, and other personnel necessary to carry out the provisions of this chapter.

(e) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 15. Section 7303.5 is added to the Business and Professions Code, to read:

7303.5. (a) The board may appoint an executive officer who is exempt from civil service. The executive officer shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter. The appointment of the executive officer is subject to the approval of the director.

(b) The executive officer shall provide examiners, inspectors, and other personnel necessary to carry out the provisions of this chapter.

(c) This section shall become operative on July 1, 2008.

(d) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 16. Section 8005 of the Business and Professions Code is amended to read:

8005. The Court Reporters Board of California is charged with the executive functions necessary for effectuating the purposes of this chapter. It may appoint committees as it deems necessary or proper. The board may appoint, prescribe the duties, and fix the salary of an executive officer. Except as provided by Section 159.5, the board may also employ other employees as may be necessary, subject to civil service and other provisions of law.

This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 17. Section 22258 of the Business and Professions Code is amended to read:

22258. (a) The following persons are exempt from the requirements of this title, subject to the requirements of subdivision (b):

(1) A person with a current and valid license issued by the California Board of Accountancy.

(2) A person who is an active member of the State Bar of California.

(3) Any trust company or trust business as defined in Chapter 1 (commencing with Section 99) of Division 1 of the Financial Code.

(4) A financial institution regulated by the state or federal government, insofar as the activities of the financial institution with respect to tax preparation are subject to federal or state examination or oversight.

(5) A person who is enrolled to practice before the Internal Revenue Service pursuant to Subpart A (commencing with Section 10.1) of Part 10 of Title 31 of the Code of Federal Regulations.

(6) Any employee of any person described in paragraph (1), (2), (3), (4), or (5), while functioning within the scope of that employment.

(7) Any employee of any corporation, partnership, association, or any entity described in subparagraph (B) of paragraph (1) of subdivision (a) of Section 22251.

(b) (1) Except for employees of entities described in paragraph (3) or (4) of subdivision (a), paragraph (6) of subdivision (a) shall apply only if all tax returns prepared by that employee are signed by a person described in paragraph (1), (2), or (5) of subdivision (a).

(2) Paragraph (7) of subdivision (a) shall apply only if all tax returns prepared by that employee are signed by the person described in paragraph (7) of subdivision (a).

(3) No person described in this subdivision as an employee may sign a tax return, unless that employee is otherwise exempt under this section, is registered as a tax preparer with the council, or is an employee of either a trust company or trust business described in paragraph (3) of subdivision (a), or any employee of a financial institution described in paragraph (4) of subdivision (a).

(c) For purposes of this section, preparation of a tax return includes the inputting of tax data into a computer.

SEC. 18. Section 22259 of the Business and Professions Code is amended to read:

22259. This chapter shall be subject to the review required by Division 1.2 (commencing with Section 473).

This chapter shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 19. Section 12529 of the Government Code, as amended by Section 90 of Chapter 588 of the Statutes of 2007, is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to investigate and prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, or any committee under the jurisdiction of the Medical Board of California or a division of the board.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, and the committees under the jurisdiction of the Medical Board of California or a division of the board, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that becomes

operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 20. Section 12529 of the Government Code, as amended by Section 91 of Chapter 588 of the Statutes of 2007, is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, or any committee under the jurisdiction of the Medical Board of California or a division of the board, and to provide ongoing review of the investigative activities conducted in support of those prosecutions, as provided in subdivision (b) of Section 12529.5.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, and the committees under the jurisdiction of the Medical Board of California or a division of the board, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become operative July 1, 2010.

SEC. 21. Section 12529.5 of the Government Code, as amended by Section 92 of Chapter 588 of the Statutes of 2007, is amended to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, or the Board of Psychology shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to work on location at the intake unit of the boards described in subdivision (d) of Section 12529 to assist in evaluating and screening complaints and to assist in developing uniform standards and procedures for processing complaints.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, division, or committees in designing and providing initial and in-service training programs for staff of the division, boards, or committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the boards shall be made by the executive officer of the division, boards, or committees as appropriate in consultation with the senior assistant.

(e) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 22. Section 12529.5 of the Government Code, as amended by Section 93 of Chapter 588 of the Statutes of 2007, is amended to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, or the Board of Psychology shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to assist the division and the boards in intake and investigations and to direct discipline-related prosecutions. Attorneys shall be assigned to work closely with each major intake and investigatory unit of the boards, to assist in the evaluation and screening of complaints from receipt through disposition and to assist in developing uniform standards and procedures for the handling of complaints and investigations.

A deputy attorney general of the Health Quality Enforcement Section shall frequently be available on location at each of the working offices at the major investigation centers of the boards, to provide consultation and related services and engage in case review with the boards' investigative, medical advisory, and intake staff. The Senior Assistant Attorney General and deputy attorneys general working at his or her direction shall consult as appropriate with the investigators of the boards, medical advisors, and executive staff in the investigation and prosecution of disciplinary cases.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, division, or committees in designing and providing initial and in-service training programs for staff of the division, boards, or committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the boards shall be made by the executive officer of the division, boards, or committees as appropriate in consultation with the senior assistant.

(e) This section shall become operative July 1, 2010.

SEC. 23. Section 12529.6 of the Government Code is amended to read:

12529.6. (a) The Legislature finds and declares that the Medical Board of California, by ensuring the quality and safety of medical care, performs one of the most critical functions of state government. Because of the critical importance of the board's public health and safety function, the complexity of cases involving alleged misconduct by physicians and surgeons, and the evidentiary burden in the board's disciplinary cases, the Legislature finds

and declares that using a vertical enforcement and prosecution model for those investigations is in the best interests of the people of California.

(b) Notwithstanding any other provision of law, as of January 1, 2006, each complaint that is referred to a district office of the board for investigation shall be simultaneously and jointly assigned to an investigator and to the deputy attorney general in the Health Quality Enforcement Section responsible for prosecuting the case if the investigation results in the filing of an accusation. The joint assignment of the investigator and the deputy attorney general shall exist for the duration of the disciplinary matter. During the assignment, the investigator so assigned shall, under the direction but not the supervision of the deputy attorney general, be responsible for obtaining the evidence required to permit the Attorney General to advise the board on legal matters such as whether the board should file a formal accusation, dismiss the complaint for a lack of evidence required to meet the applicable burden of proof, or take other appropriate legal action.

(c) The Medical Board of California, the Department of Consumer Affairs, and the Office of the Attorney General shall, if necessary, enter into an interagency agreement to implement this section.

(d) This section does not affect the requirements of Section 12529.5 as applied to the Medical Board of California where complaints that have not been assigned to a field office for investigation are concerned.

(e) It is the intent of the Legislature to enhance the vertical enforcement and prosecution model as set forth in subdivision (a). The Medical Board of California shall do both of the following:

(1) Increase its computer capabilities and compatibilities with the Health Quality Enforcement Section in order to share case information.

(2) Establish and implement a plan to locate its enforcement staff and the staff of the Health Quality Enforcement Section in the same offices, as appropriate, in order to carry out the intent of the vertical enforcement and prosecution model.

(f) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 24. Section 12529.7 of the Government Code is amended to read:

12529.7. By July 1, 2009, the Medical Board of California, in consultation with the Department of Justice, the Department of Consumer Affairs, the Department of Finance, and the Department of Personnel Administration, shall report and make recommendations to the Governor and the Legislature on the vertical enforcement and prosecution model created under Section 12529.6.

SEC. 25. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime

within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 26. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To ensure that individuals engaging in certain professions and vocations are adequately regulated in order to protect and safeguard consumers and the public in this state, it is necessary that this act take effect immediately.

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 963
Author: Ridley-Thomas
Bill Date: July 1, 2008, amended
Subject: Regulatory Boards: operations
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill makes various changes to the process of Sunset Review and oversight for all boards under the Department of Consumer Affairs and imposes new requirements regarding report posting.

ANALYSIS:

This bill enacts several changes to the administrative and operations structure of the Department of Consumer Affairs (DCA). The changes affecting the Medical Board (Board) are as follows:

- Section 2 of the bill (page 4) requires the Board to annually post on the Internet Web site the number of reports received for criminal convictions; judgments, settlements, or arbitration awards; and claims paid by a professional liability insurer caused by the licensee's negligence, error, or omission. These totals can be easily posted by category and this will not affect the Board.
- Section 3 of the bill (page 4) authorizes the Board to adopt regulations that provide an incentive to licensees for providing services within the scope of his or her license on a pro bono basis. The Board already offers those physicians who choose to work as volunteers a waived renewal fee. Additionally, most physicians volunteer their services in some manner. It is a permissive provision thus the Board is not mandated to pursue this concept.
- Section 4 of the bill (page 5) allows the Board to adopt regulations that establish requirements for the number of staff required to adequately investigate and bring disciplinary actions against a licensee. These regulations must be adopted before

June 30, 2009. This provision is permissive and the Board is not mandated to pursue this concept.

- Section 5 of the bill (page 5) requires every member of the Board to disclose all ex parte communications at the Board's next public meeting and those ex parte communications must be recorded in the Board's minutes. The bill defines "Ex parte" communication as any oral or written communication concerning matters, other than purely procedural, under the board's jurisdiction that are subject to a vote by the Board, that occurred between the member and a person, other than another board member or an employee of the board or the department, who intends to influence the decision of the member. This would present a significant burden on the members whose colleagues at the hospital or society meetings wish to discuss a pending decision (such as the sunset of diversion). It would require members to keep thorough records of all conversations with colleagues and acquaintances that are of policy impact since every "person" must be recorded.
- Section 7 of the bill (page 6) states that, in the event the Board (members) sunsets, a successor board (members) will be appointed in its place. The successor board will have the same number of members and the same composition as the previous board. This replaces the previous process for the sunset of the Board, in which it would become a Bureau. This is a preferred alternative.
- Section 8 of the bill (page 7) requires all appointments of an executive officer by the Board to be subject to BOTH the approval of the director of DCA and confirmation by the Senate. This provision adds two layers of oversight to the Board's ability to appoint and hire an executive officer.
- Section 9 of the bill (page 8) states that DCA shall develop a common procedure for maintaining and publicly posting meeting minutes for all boards. Each board must use the method developed by DCA and must post the minutes of its meetings on its Internet Web site within 10 days of their approval (approval language to be amended into the bill). This is already the process for the Board. Issue that was raised at a meeting on the bill was the content/structure of the minutes. This continues to be an item for discussion.
- Section 10 of the bill (page 9) adds section 127.5 to the Business and Professions Code, requiring DCA to report to the Legislature and the Governor when a board has been unable to convene a meeting of the board due to a lack of a quorum caused by the absence of its members or by a vacancy in its membership. This is a good provision.
- Section 11 of the bill (page 10) does not apply to the Board.
- Section 12 of the bill (page 10) establishes a sunset date for the Board of January 1, 2011.

- Section 13 of the bill (page 12) specifies the requirement for a report to the Legislature to reconstitute the Board. This means that by March 1, 2009 a comprehensive report would need to be made to the Legislature as outlined. If this bill passes and is signed, the Board would have approximately six months to complete this report.
- Section 14 of the bill (page 12) sets the timing for the hearing on the Board's report, during the interim recess preceeding the date upon the Board's membership reconstitution. This is not enough time to have a bill to change the reconstitution date, thus the bill needs to clarify it is the interim recess at least twelve months prior to reconstitution.
- Sections 15 through 17 have to do with the review of the report, public hearings, and standing committees of the Legislature.

FISCAL: None

POSITION: Recommendation: Oppose unless amended.

July 17, 2008

AMENDED IN ASSEMBLY JULY 1, 2008
AMENDED IN ASSEMBLY JUNE 25, 2007
AMENDED IN SENATE APRIL 16, 2007

SENATE BILL

No. 963

Introduced by Senator Ridley-Thomas

February 23, 2007

~~An act to amend Sections 22, 102.3, 107, 108, 312, 313.1, 321, 1601.1, 1632.5, 1634.2, 1638.1, 1638.7, 1742, 1751, 2001, 2460, 2531, 2570.19, 2602, 2701, 2841, 2920, 3010.5, 3502.1, 3504, 3685, 3710, 4001, 4003, 4200.1, 4200.3, 4501, 4800, 4928, 4990, 5000, 5510, 5621, 5810, 5811, 6510, 6511, 6710, 7000.5, 7200, 7303, 7810, 8000, 8520, 8710, 9882, 18602, 18602.5, 18824, and 18882 of, to add Sections 27.5, 36, 37, 38, 101.5, 117, 117.5, 127.5, 156.7, and 450.1 to, to add Chapter 4.5 (commencing with Section 360) to Division 1 of, to add Division 1.3 (commencing with Section 474.20) to, to repeal Sections 2569, 4989, 4990.24, 7304, and 22259 of, to repeal Division 1.2 (commencing with Section 473) of, and to repeal and add Section 101.1 of, the Business and Professions Code, and to amend Sections 9148.8 and 9148.51 of, and to repeal Section 9148.52 of, the Government Code, relating to regulatory entities, and making an appropriation therefor. An act to amend Sections 22, 107, 108, 473.1, 473.2, 473.3, 473.4, and 473.5 of, to add Sections 27.5, 36, 37, 38, 127.5, 473.12, and 473.7 to, and to repeal and add Section 101.1 of, the Business and Professions Code, relating to regulatory boards.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 963, as amended, Ridley-Thomas. Regulatory boards: operations.

Existing law creates various regulatory boards, as defined, within the Department of Consumer Affairs ~~and makes their funds separate accounts within the Professions and Vocations Fund. Under existing law, the revenue in certain of these accounts is continuously appropriated to the board, other than fine and penalty revenues, with board members serving specified terms of office. Existing law authorizes each board to appoint a person, exempt from Civil Service, who shall be designated as an executive officer.~~

Existing law generally makes the regulatory boards inoperative ~~and repealed on a specified date dates~~, unless ~~that date is~~ *those dates are* deleted or extended by subsequent legislation, and subjects these boards ~~that are scheduled to become inoperative and repealed~~ as well as other boards in state government, as specified, to review by the Joint Committee on Boards, Commissions, and Consumer Protection. Under existing law, that committee, following a specified procedure, recommends whether the board should be continued or its functions modified.

~~This bill would delete those provisions making the boards inoperative on a specified date and subjecting boards to review by the Joint Committee on Boards, Commissions, and Consumer Protection. The bill would instead make each of those boards subject to review by a standing policy committee of the Legislature upon request by a Member of the Legislature or the chief of the Office of the Consumer Advocate, which the bill would create in the Department of Consumer Affairs. The bill would, upon the committee's determination that a board is deficient, as specified, provide for the removal of all incumbent board members without a hearing and the appointment of a successor board, as specified. The bill would require the Office of the Consumer Advocate to serve as an independent monitor for a board that is found deficient. The bill would authorize the office to appear at meetings and to participate in disciplinary proceedings by a board within the department if required to promote or protect the interests of consumers, as defined, and would require the office to perform other specified duties. The bill would require the office to charge each board a fee to support the office's functions and would thereby make an appropriation by expanding the expenditure purposes of a continuously appropriated fund. The bill would create the Consumer Advocate Fund where these fees would be deposited and would be available to the office upon appropriation by the Legislature. The bill would require the director to~~

~~report annually to the Governor and the Legislature, as specified, on the office's operations.~~

~~The bill would require boards within the department to enter into an agreement with the department for the performance of administrative and ministerial functions and would require the Director of Consumer Affairs, prior to January 1, 2010, to replace the existing technology system serving the department and its component boards and to charge each board its pro rata share of the cost to replace the system.~~

This bill would, notwithstanding any other provision of law, terminate the term of office of each board member of certain boards within the department on specified and unspecified dates. The bill would subject boards that are scheduled to have their board membership so reconstituted to review by the Joint Committee on Boards, Commissions, and Consumer Protection. The bill would also require the appropriate standing policy committee of the Legislature to investigate board deficiencies and to hold specified public hearings.

~~The bill would also require each board within the department to adopt performance measures, as specified, and report quarterly to the director and the chief of the Office of Consumer Advocate relating to those measures. The bill would also require boards to post the information on their Internet Web site and to report the information to the Legislative Analyst's Office, the Legislature, and the Department of Finance. The bill would require the Office of the Consumer Advocate to report to the Legislature if a board failed to meet its performance measures. The bill would also require those boards to post annually on their *its* Internet Web-sites *Site* the number of reports in specified categories that it received that year for its licensees.~~

~~The bill would allow a person to serve as the public member of more than one of these boards and would require all members of these boards, as well as bureau chiefs, to report annually to their appointing authority on their goals and objectives and success in achieving them, which would be posted on the board's Internet Web-site *executive officer or registrar of more than one board and would make all appointments of an executive officer or registrar subject to approval by the Director of Consumer Affairs and confirmation by the Senate.* The bill would require the department to report to the Legislature and Governor if a board was unable to meet because of a lack of a quorum or vacancy. The bill would require members of these boards and other state boards to report ex parte communications, as defined, in the board's minutes *and would require the department to develop a common method of making boards'*~~

minutes available to the public. The bill would ~~require~~ *authorize* boards within the department, the State Bar, the Office of Real Estate Appraisers, and other state boards that license professions or businesses to adopt regulations to provide incentives to licensees to provide services on a pro bono basis and to adopt regulations prior to June 30, 2009, establishing regulatory board staffing requirements.

Vote: majority. Appropriation: ~~yes~~ *no*. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22 of the Business and Professions Code
2 is amended to read:

3 22. "Board," as used in any provision of this code, refers to
4 the board in which the administration of the provision is vested,
5 and unless otherwise expressly provided, shall include "bureau,"
6 "commission," "committee," "department," "division," "examining
7 committee," "program," and "agency."

8 SEC. 2. Section 27.5 is added to the Business and Professions
9 Code, to read:

10 27.5. A board within the department shall annually post on its
11 Internet Web site the number of reports it received that year for
12 its licensees in each of the following categories:

- 13 (a) Criminal convictions.
- 14 (b) Judgments, settlements, or arbitration awards.
- 15 (c) Claims paid by a professional liability insurer caused by the
16 licensee's negligence, error, or omission.

17 SEC. 3. Section 36 is added to the Business and Professions
18 Code, to read:

19 36. A board within the department, the State Bar, the Office
20 of Real Estate Appraisers, and any other state board that issues a
21 license, certificate, or registration authorizing a person to engage
22 in a business or profession may adopt regulations that provide an
23 incentive to the holder to provide services within the scope of his
24 or her license, certificate, or registration on a pro bono basis. The
25 regulations may reduce the amount of the renewal fee for a
26 licensee, certificate holder, or registrant who demonstrates
27 compliance with the pro bono requirements set forth in the
28 regulations.

1 SEC. 4. Section 37 is added to the Business and Professions
2 Code, to read:

3 37. A board within the department and any other state board
4 that issues a license, certificate, or registration authorizing a person
5 to engage in a business or profession ~~shall~~ *may* adopt regulations
6 prior to June 30, 2009, that establish requirements for the number
7 of staff required to adequately investigate and, if appropriate, bring
8 a disciplinary action against a licensee, certificate holder, or
9 registrant regulated by the board. The staff level requirements
10 shall, at a minimum, be the number of staff required per 1,000
11 persons regulated by the board and include the appropriate number
12 of staff to complete all investigatory and disciplinary functions.

13 SEC. 5. Section 38 is added to the Business and Professions
14 Code, to read:

15 38. A member of a board within the department and a member
16 of a state board, as defined in Section 9148.2 of the Government
17 Code, shall disclose all of his or her ex parte communications at
18 the board's next public meeting, and the ex parte communications
19 shall be recorded in the board's minutes. "Ex parte communication"
20 means any oral or written communication concerning matters,
21 other than purely procedural matters, under the board's jurisdiction
22 that are subject to a vote by the board that occurred between the
23 member and a person, other than another board member or an
24 employee of the board or the department of which the board is a
25 part, who intends to influence the decision of the member.

26 SEC. 6. Section 101.1 of the Business and Professions Code
27 is repealed.

28 SEC. 7. Section 101.1 is added to the Business and Professions
29 Code, to read:

30 ~~101.1. (a) It is the intent of the Legislature that all existing~~
31 ~~and proposed consumer-related boards or categories of licensed~~
32 ~~professionals be subject to ongoing and continuous review as well~~
33 ~~as a periodic thorough review when issues arise requiring that level~~
34 ~~of review and such a review is requested by a Member of the~~
35 ~~Legislature or the chief of the Office of the Consumer Advocate~~
36 ~~as provided in Division 1.3 (commencing with Section 474.20).~~
37 ~~The review of a board shall evaluate and determine whether its~~
38 ~~operations are effectively protecting the public and that protection~~
39 ~~of the public is the highest priority of the board.~~

1 ~~(b) Notwithstanding any other provision of law, if a board is~~
2 ~~deemed deficient and its members removed, as described in Section~~
3 ~~474.21~~

4 *101.1. Notwithstanding any other provision of law, if the terms*
5 *of office of the members of a board are terminated in accordance*
6 *with the act that added this section or by subsequent acts, a*
7 *successor board shall be appointed that shall succeed to, and be*
8 *vested with, all the duties, powers, purposes, responsibilities, and*
9 *jurisdiction not otherwise repealed or made inoperative of the*
10 *board that it is succeeding. The successor board shall have the*
11 *same number of members and composition as the board that it is*
12 *succeeding, and those members shall be appointed by the same*
13 *appointing authorities, for the same term, and with the same*
14 *membership requirements as the members of the board it is*
15 *succeeding. The successor board shall have the same authority to*
16 *appoint an executive officer as the board that it is succeeding as*
17 *of the date that board was found deficient. The successor board*
18 *members shall be appointed within 10 business days of receipt by*
19 *the Joint Committee on Rules of the deficiency report, as described*
20 *in Section 474.21.*

21 SEC. 8. Section 101.5 is added to the Business and Professions
22 Code, to read:

23 101.5. (a) Each board within the department shall enter into
24 an agreement with the department for the department to provide
25 administrative and ministerial functions and services, including,
26 but not limited to, personnel services, information technology, the
27 administration of call centers, and the administration of
28 examinations. The Legislature intends that these agreements shall
29 achieve cost savings resulting from economies of scale and a more
30 consistent delivery of services to California consumers and
31 licensees.

32 (b) A board shall not enter into an agreement described in
33 subdivision (a) if it would reduce the board's ability to comply
34 with its duties prescribed by law.

35 SEC. 9. Section 102.3 of the Business and Professions Code
36 is amended to read:

37 102.3. (a) The director may enter into an interagency
38 agreement with an appropriate entity within the Department of
39 Consumer Affairs as provided for in Section 101 to delegate the
40 duties, powers, purposes, responsibilities, and jurisdiction that

1 have been succeeded and vested with the department, of a board
2 that became inoperative and was repealed in accordance with
3 Chapter 908 of the Statutes of 1994.

4 (b) (1) If, pursuant to subdivision (a), an interagency agreement
5 is entered into between the director and that entity, the entity
6 receiving the delegation of authority may establish a technical
7 committee to regulate, as directed by the entity, the profession
8 subject to the authority that has been delegated. The entity may
9 delegate to the technical committee only those powers that it
10 received pursuant to the interagency agreement with the director.
11 The technical committee shall have only those powers that have
12 been delegated to it by the entity.

13 (2) If the entity delegates its authority to adopt, amend, or repeal
14 regulations to the technical committee, all regulations adopted,
15 amended, or repealed by the technical committee shall be subject
16 to the review and approval of the entity.

17 (3) The entity shall not delegate to a technical committee its
18 authority to discipline a licensee who has violated the provisions
19 of the applicable chapter of the Business and Professions Code
20 that is subject to the director's delegation of authority to the entity.

21 (c) An interagency agreement entered into, pursuant to
22 subdivision (a), shall continue until the licensing program
23 administered by the technical committee has undergone a review
24 by the Office of the Consumer Advocate to evaluate and determine
25 whether the highest priority of the licensing program is the
26 protection of the public. Thereafter, at the discretion of the chief
27 of that office, the interagency agreement may be renewed.

28 ~~SEC. 10.~~

29 SEC. 8. Section 107 of the Business and Professions Code is
30 amended to read:

31 107. (a) Pursuant to subdivision (e) of Section 4 of Article VII
32 of the California Constitution, each board may appoint a person
33 exempt from civil service and may fix his or her salary, with the
34 approval of the Department of Personnel Administration pursuant
35 to Section 19825 of the Government Code, who shall be designated
36 as an executive officer unless the licensing act of the particular
37 board designates the person as a registrar. A person may be
38 appointed as an executive officer or registrar for more than one
39 board if approved by each of those boards and may serve in those

1 capacities at the same time if practical and consistent with law and
2 the respective board functions and duties.

3 (b) Notwithstanding any other provision of law, all appointments
4 of an executive officer or registrar shall be subject to the approval
5 of the director and confirmation by the Senate.

6 ~~SEC. 11.~~

7 *SEC. 9.* Section 108 of the Business and Professions Code is
8 amended to read:

9 108. (a) Each of the boards comprising the department exists
10 as a separate unit, and has the functions of setting standards,
11 holding meetings, and setting dates thereof, preparing and
12 conducting examinations, passing upon applicants, conducting
13 investigations of violations of laws under its jurisdiction, issuing
14 citations and holding hearings for the revocation of licenses, and
15 the imposing of penalties following those hearings, insofar as these
16 powers are given by statute to each respective board.

17 (b) The department shall develop a common method of
18 maintaining, posting, and making available to the public minutes
19 of the meetings of the boards comprising the department. Each of
20 those boards shall use that method and shall post the minutes of
21 its meetings on its Internet Web site within 10 days of the date of
22 the meeting.

23 ~~SEC. 12.~~ Section 117 is added to the Business and Professions
24 Code, to read:

25 ~~117. (a) Each board within the department shall adopt~~
26 ~~meaningful, measurable, and manageable performance measures.~~
27 ~~Performance measures include, but are not limited to, the following~~
28 ~~information:~~

29 ~~(1) A comprehensive statement of the board's mission, goals,~~
30 ~~objectives, and legal jurisdiction in protecting the health, safety,~~
31 ~~and welfare of the public.~~

32 ~~(2) The board's enforcement priorities, complaint and~~
33 ~~enforcement data, budget expenditures with average and median~~
34 ~~costs per case, and case aging data specific to post and~~
35 ~~preaccusation cases at the Attorney General's office.~~

36 ~~(3) The board's fund conditions, sources of revenues, and~~
37 ~~expenditure categories for the last four fiscal years by program~~
38 ~~component.~~

39 ~~(4) The board's description of its licensing process including~~
40 ~~the time and costs required to implement and administer its~~

1 ~~licensing examination, ownership of the license examination,~~
2 ~~relevancy and validity of the licensing examination, and passage~~
3 ~~rate and areas of examination.~~

4 ~~(5) The board's initiation of legislative efforts, budget change~~
5 ~~proposals, and other initiatives it has taken to improve its legislative~~
6 ~~mandate.~~

7 ~~(b) Each board within the department shall report to the director~~
8 ~~and the chief of the Office of the Consumer Advocate its~~
9 ~~performance measures and data relating to those measures on a~~
10 ~~quarterly basis. Each board shall post quarterly on its Internet Web~~
11 ~~site the information it reported pursuant to this subdivision and~~
12 ~~provide the information annually to the Department of Finance,~~
13 ~~the Legislative Analyst's Office, and the Legislature.~~

14 ~~(e) The chief of the Office of the Consumer Advocate, in~~
15 ~~consultation with the Legislative Analyst's Office, shall annually~~
16 ~~review the information reported by boards pursuant to subdivision~~
17 ~~(b) and report to the Legislature if it determines that a board has~~
18 ~~failed to meet its performance measures.~~

19 ~~(d) The department may adopt regulations pertaining to the~~
20 ~~requirements described in subdivision (a).~~

21 ~~SEC. 13. Section 117.5 is added to the Business and Professions~~
22 ~~Code, to read:~~

23 ~~117.5. (a) Each member of a board within the department and~~
24 ~~the chief of any bureau within the board shall annually report, on~~
25 ~~or before December 31 of each year, to the authority that appointed~~
26 ~~him or her the extent to which the member or chief achieved his~~
27 ~~or her goals and objectives that year and shall also report the goals~~
28 ~~and objectives he or she expects to achieve during the following~~
29 ~~calendar year.~~

30 ~~(b) The board or bureau shall post the reports described in~~
31 ~~subdivision (a) submitted by its members chief on its Internet Web~~
32 ~~site within 30 days of their submission date.~~

33 ~~SEC. 14.~~

34 ~~SEC. 10. Section 127.5 is added to the Business and Professions~~
35 ~~Code, to read:~~

36 ~~127.5. The department shall report to the Legislature and the~~
37 ~~Governor when a board within the department has been unable to~~
38 ~~schedule or convene a meeting of the board because of a lack of~~
39 ~~a quorum caused by the absence of its members or by a vacancy~~
40 ~~in its membership.~~

1 ~~SEC. 15. Section 156.7 is added to the Business and Professions~~
2 ~~Code, to read:~~

3 ~~156.7. (a) Prior to January 1, 2010, the director, in consultation~~
4 ~~with the State Chief Information Officer, shall replace the~~
5 ~~department's existing information technology system with a system~~
6 ~~that meets the requirements of the department and of the boards~~
7 ~~within the department.~~

8 ~~(b) The director shall charge each of the boards on a pro rata~~
9 ~~share basis for the costs of replacing the information technology~~
10 ~~system. The charge shall be an administrative expense that may~~
11 ~~be levied in advance against the funds of any of the boards pursuant~~
12 ~~to Section 201.~~

13 ~~(c) Notwithstanding any other provision of this section, the~~
14 ~~procurement of the information technology system shall be made~~
15 ~~in accordance with Chapter 3 (commencing with Section 12100)~~
16 ~~of Part 2 of Division 2 of the Public Contract Code.~~

17 ~~SEC. 11. Section 473.1 of the Business and Professions Code~~
18 ~~is amended to read:~~

19 ~~473.1. This chapter shall apply to all of the following:~~

20 ~~(a) Every board, as defined in Section 22, that is scheduled to~~
21 ~~become inoperative and to be repealed have its membership~~
22 ~~reconstituted on a specified date as provided by the specific act~~
23 ~~relating to the board Section 473.12.~~

24 ~~(b) The Bureau for Postsecondary and Vocational Education.~~
25 ~~For purposes of this chapter, "board" includes the bureau.~~

26 ~~(c) The Cemetery and Funeral Bureau.~~

27 ~~SEC. 12. Section 473.12 is added to the Business and~~
28 ~~Professions Code, to read:~~

29 ~~473.12. Notwithstanding any other provision of law, the term~~
30 ~~of office of each member of the following boards in the department~~
31 ~~shall terminate on the date listed:~~

32 ~~(a) The Dental Board of California: January 1, 2012.~~

33 ~~(b) The Medical Board of California: January 1, 2011.~~

34 ~~(c) The State Board of Optometry: January 1, 2011.~~

35 ~~(d) The California State Board of Pharmacy: January 1, 2011.~~

36 ~~(e) The Veterinary Medical Board: January 1, 2012.~~

37 ~~(f) The California Board of Accountancy: January 1, 2012.~~

38 ~~(g) The California Architects Board: January 1, 2012.~~

39 ~~(h) The State Board of Barbering and Cosmetology: January~~
40 ~~1, 2012.~~

- 1 (i) *The Board for Professional Engineers and Land Surveyors:*
2 *January 1, 2012.*
3 (j) *The Contractors' State License Board: January 1, 2010.*
4 (k) *The Bureau for Private Postsecondary Education: ____.*
5 (l) *The Structural Pest Control Board: January 1, 2012.*
6 (m) *The Bureau of Home Furnishings and Thermal Insulation:*
7 ____.
8 (n) *The Board of Registered Nursing: January 1, 2011.*
9 (o) *The Board of Behavioral Sciences: January 1, 2010.*
10 (p) *The State Athletic Commission: January 1, 2010.*
11 (q) *The Cemetery and Funeral Bureau: ____.*
12 (r) *The State Board of Guide Dogs for the Blind: January 1,*
13 *2012.*
14 (s) *The Bureau of Security and Investigative Services: ____.*
15 (t) *The Court Reporters Board of California: January 1, 2010.*
16 (u) *The Board of Vocational Nursing and Psychiatric*
17 *Technicians: January 1, 2012.*
18 (v) *The Landscape Architects Technical Committee: January*
19 *1, 2012.*
20 (w) *The Bureau of Electronic and Appliance Repair: ____.*
21 (x) *The Division of Investigation, Department of Consumer*
22 *Affairs: ____.*
23 (y) *The Bureau of Automotive Repair: ____.*
24 (z) *The Board for Geologists and Geophysicists: January 1,*
25 *2010.*
26 (aa) *The Respiratory Care Board of California: January 1,*
27 *2011.*
28 (ab) *The Acupuncture Board: January 1, 2010.*
29 (ac) *The Board of Psychology: January 1, 2010.*
30 (ad) *The California Board of Podiatric Medicine: January 1,*
31 *2011.*
32 (ae) *The Physical Therapy Board of California: January 1,*
33 *2014.*
34 (af) *The Arbitration Review Program: ____.*
35 (ag) *The Dental Hygiene Committee of California: ____.*
36 (ah) *The Hearing Aid Dispensers Bureau: ____.*
37 (ai) *The Physician Assistant Committee, Medical Board of*
38 *California: January 1, 2012.*
39 (aj) *The Speech-Language Pathology and Audiology Board:*
40 *January 1, 2012.*

1 (ak) *The California Board of Occupational Therapy: January*
2 *1, 2014.*

3 (al) *The Osteopathic Medical Board of California: ____.*

4 (am) *The Bureau of Naturopathic Medicine: ____.*

5 SEC. 13. *Section 473.2 of the Business and Professions Code*
6 *is amended to read:*

7 473.2. All boards to which this chapter applies shall, with the
8 assistance of the Department of Consumer Affairs, prepare an
9 analysis and submit a report to the Joint Committee on Boards,
10 Commissions, and Consumer Protection no later than 22 months
11 before that ~~board shall become inoperative~~ *board's membership*
12 *shall be reconstituted pursuant to Section 473.12.* The analysis
13 and report shall include, at a minimum, all of the following:

14 (a) A comprehensive statement of the board's mission, goals,
15 objectives and legal jurisdiction in protecting the health, safety,
16 and welfare of the public.

17 (b) The board's enforcement priorities, complaint and
18 enforcement data, budget expenditures with average- and
19 median-costs per case, and case aging data specific to post and
20 preaccusation cases at the Attorney General's office.

21 (c) The board's fund conditions, sources of revenues, and
22 expenditure categories for the last four fiscal years by program
23 component.

24 (d) The board's description of its licensing process including
25 the time and costs required to implement and administer its
26 licensing examination, ownership of the license examination,
27 relevancy and validity of the licensing examination, and passage
28 rate and areas of examination.

29 (e) The board's initiation of legislative efforts, budget change
30 proposals, and other initiatives it has taken to improve its legislative
31 mandate.

32 SEC. 14. *Section 473.3 of the Business and Professions Code*
33 *is amended to read:*

34 473.3. (a) Prior to the ~~termination, continuation, or~~
35 ~~reestablishment of any board or any of the board's functions~~
36 *reconstitution of the membership of any board described in Section*
37 *473.12,* the Joint Committee on Boards, Commissions, and
38 Consumer Protection shall, during the interim recess preceding
39 the date upon which a ~~board becomes inoperative~~ *board's*
40 *membership is to be reconstituted,* hold public hearings to receive

1 testimony from the Director of Consumer Affairs, the board
2 involved, and the public and regulated industry. In that hearing,
3 each board shall have the burden of demonstrating a compelling
4 public need for the continued existence of the ~~board~~ or regulatory
5 program, and that its licensing function is the least restrictive
6 regulation consistent with the public health, safety, and welfare.

7 (b) In addition to subdivision (a), in 2002 and every four years
8 thereafter, the committee, in cooperation with the California
9 Postsecondary Education Commission, shall hold a public hearing
10 to receive testimony from the Director of Consumer Affairs, the
11 Bureau for Private Postsecondary and Vocational Education,
12 private postsecondary educational institutions regulated by the
13 bureau, and students of those institutions. In those hearings, the
14 bureau shall have the burden of demonstrating a compelling public
15 need for the continued existence of the bureau and its regulatory
16 program, and that its function is the least restrictive regulation
17 consistent with the public health, safety, and welfare.

18 (c) The committee, in cooperation with the California
19 Postsecondary Education Commission, shall evaluate and review
20 the effectiveness and efficiency of the Bureau for Private
21 Postsecondary and Vocational Education, based on factors and
22 minimum standards of performance that are specified in Section
23 473.4. The committee shall report its findings and
24 recommendations as specified in Section 473.5. The bureau shall
25 prepare an analysis and submit a report to the committee as
26 specified in Section 473.2.

27 (d) In addition to subdivision (a), in 2003 and every four years
28 thereafter, the committee shall hold a public hearing to receive
29 testimony from the Director of Consumer Affairs and the Bureau
30 of Automotive Repair. In those hearings, the bureau shall have the
31 burden of demonstrating a compelling public need for the continued
32 existence of the bureau and its regulatory program, and that its
33 function is the least restrictive regulation consistent with the public
34 health, safety, and welfare.

35 (e) The committee shall evaluate and review the effectiveness
36 and efficiency of the Bureau of Automotive Repair based on factors
37 and minimum standards of performance that are specified in
38 Section 473.4. The committee shall report its findings and
39 recommendations as specified in Section 473.5. The bureau shall

1 prepare an analysis and submit a report to the committee as
2 specified in Section 473.2.

3 *SEC. 15. Section 473.4 of the Business and Professions Code*
4 *is amended to read:*

5 473.4. (a) The Joint Committee on Boards, Commissions, and
6 Consumer Protection shall evaluate and determine whether a board
7 or regulatory program has demonstrated a public need for the
8 continued existence of the ~~board~~ or regulatory program and for
9 the degree of regulation the board or regulatory program
10 implements based on the following factors and minimum standards
11 of performance:

12 (1) Whether regulation by the board is necessary to protect the
13 public health, safety, and welfare.

14 (2) Whether the basis or facts that necessitated the initial
15 licensing or regulation of a practice or profession have changed.

16 (3) Whether other conditions have arisen that would warrant
17 increased, decreased, or the same degree of regulation.

18 (4) If regulation of the profession or practice is necessary,
19 whether existing statutes and regulations establish the least
20 restrictive form of regulation consistent with the public interest,
21 considering other available regulatory mechanisms, and whether
22 the board rules enhance the public interest and are within the scope
23 of legislative intent.

24 (5) Whether the board operates and enforces its regulatory
25 responsibilities in the public interest and whether its regulatory
26 mission is impeded or enhanced by existing statutes, regulations,
27 policies, practices, or any other circumstances, including budgetary,
28 resource, and personnel matters.

29 (6) Whether an analysis of board operations indicates that the
30 board performs its statutory duties efficiently and effectively.

31 (7) Whether the composition of the board adequately represents
32 the public interest and whether the board encourages public
33 participation in its decisions rather than participation only by the
34 industry and individuals it regulates.

35 (8) Whether the board and its laws or regulations stimulate or
36 restrict competition, and the extent of the economic impact the
37 board's regulatory practices have on the state's business and
38 technological growth.

39 (9) Whether complaint, investigation, powers to intervene, and
40 disciplinary procedures adequately protect the public and whether

1 final dispositions of complaints, investigations, restraining orders,
2 and disciplinary actions are in the public interest; or if it is, instead,
3 self-serving to the profession, industry or individuals being
4 regulated by the board.

5 (10) Whether the scope of practice of the regulated profession
6 or occupation contributes to the highest utilization of personnel
7 and whether entry requirements encourage affirmative action.

8 (11) Whether administrative and statutory changes are necessary
9 to improve board operations to enhance the public interest.

10 (b) The Joint Committee on Boards, Commissions, and
11 Consumer Protection shall consider alternatives to placing
12 responsibilities and jurisdiction of the board under the Department
13 of Consumer Affairs.

14 (c) Nothing in this section precludes any board from submitting
15 other appropriate information to the Joint Committee on Boards,
16 Commissions, and Consumer Protection.

17 *SEC. 16. Section 473.5 of the Business and Professions Code*
18 *is amended to read:*

19 473.5. The Joint Committee on Boards, Commissions, and
20 Consumer Protection shall report its findings and preliminary
21 recommendations to the department for its review, and, within 90
22 days of receiving the report, the department shall report its findings
23 and recommendations to the Joint Committee on Boards,
24 Commissions, and Consumer Protection during the next year of
25 the regular session that follows the hearings described in Section
26 473.3. The committee shall then meet to vote on final
27 recommendations. A final report shall be completed by the
28 committee and made available to the public and the Legislature.
29 The report shall include final recommendations of the department
30 and the committee and ~~whether each board or function scheduled~~
31 ~~for repeal shall be terminated, continued, or reestablished, the~~
32 ~~board's membership should be reconstituted~~ and whether its
33 functions should be revised. If the committee or the department
34 deems it advisable, the report may include proposed bills to carry
35 out its recommendations.

36 *SEC. 17. Section 473.7 is added to the Business and Professions*
37 *Code, to read:*

38 473.7. The appropriate standing policy committee of the
39 Legislature shall, through its oversight function, investigate the
40 perceived deficiencies in the operation of a board to which this

1 *chapter applies and hold public hearings on any matter subject to*
2 *public hearing under Section 473.3.*

3 SEC. 16. ~~Section 312 of the Business and Professions Code is~~
4 ~~amended to read:~~

5 ~~312. (a) The director shall submit to the Governor and the~~
6 ~~Legislature on or before January 1, 2003, and annually thereafter,~~
7 ~~a report of programmatic and statistical information regarding the~~
8 ~~activities of the department and its constituent entities. The report~~
9 ~~shall include information concerning the director's activities~~
10 ~~pursuant to Section 326, including the number and general patterns~~
11 ~~of consumer complaints and the action taken on those complaints.~~

12 ~~(b) On or before January 1 of each year, beginning in 2009, the~~
13 ~~director shall submit to the chairperson of the fiscal committee of~~
14 ~~each house of the Legislature and to the Joint Legislative Budget~~
15 ~~Committee all of the following information:~~

16 ~~(1) The number of personnel years assigned to the Office of the~~
17 ~~Consumer Advocate.~~

18 ~~(2) The total dollars expended by the Office of the Consumer~~
19 ~~Advocate in the prior year, the estimated total dollars expended~~
20 ~~in the current year, and the total dollars proposed for appropriation~~
21 ~~in the following budget year.~~

22 ~~(3) Workload standards and measures for the Office of the~~
23 ~~Consumer Advocate.~~

24 SEC. 17. ~~Section 313.1 of the Business and Professions Code~~
25 ~~is amended to read:~~

26 ~~313.1. (a) Notwithstanding any other provision of law to the~~
27 ~~contrary, no rule or regulation, except those relating to~~
28 ~~examinations and qualifications for licensure, and no fee change~~
29 ~~proposed or promulgated by any of the boards, commissions, or~~
30 ~~committees within the department, shall take effect pending~~
31 ~~compliance with this section.~~

32 ~~(b) The director and the chief of the Office of the Consumer~~
33 ~~Advocate shall be formally notified of and shall be provided a full~~
34 ~~opportunity to review, in accordance with the requirements of~~
35 ~~Article 5 (commencing with Section 11346) of Chapter 3.5 of Part~~
36 ~~1 of Division 3 of Title 2 of the Government Code, and this section,~~
37 ~~all of the following:~~

38 ~~(1) All notices of proposed action, any modifications and~~
39 ~~supplements thereto, and the text of proposed regulations.~~

1 ~~(2) Any notices of sufficiently related changes to regulations~~
2 ~~previously noticed to the public, and the text of proposed~~
3 ~~regulations showing modifications to the text.~~

4 ~~(3) Final rulemaking records.~~

5 ~~(e) The submission of all notices and final rulemaking records~~
6 ~~to the director and the chief of the Office of the Consumer~~
7 ~~Advocate and the completion of their review, as authorized by this~~
8 ~~section, shall be a precondition to the filing of any rule or~~
9 ~~regulation with the Office of Administrative Law. The Office of~~
10 ~~Administrative Law shall have no jurisdiction to review a rule or~~
11 ~~regulation subject to this section until after the completion of the~~
12 ~~director's review and only then if the director and the chief of the~~
13 ~~Office of the Consumer Advocate have not disapproved it. The~~
14 ~~filing of any document with the Office of Administrative Law shall~~
15 ~~be accompanied by a certification that the board, commission, or~~
16 ~~committee has complied with the requirements of this section.~~

17 ~~(d) Following the receipt of any final rulemaking record subject~~
18 ~~to subdivision (a), the director and the chief of the Consumer~~
19 ~~Advocate shall have the authority for a period of 30 days to~~
20 ~~disapprove a proposed rule or regulation on the ground that it is~~
21 ~~injurious to the public health, safety, or welfare.~~

22 ~~(e) Final rulemaking records shall be filed with the director and~~
23 ~~the chief of the Office of the Consumer Advocate within the~~
24 ~~one-year notice period specified in Section 11346.4 of the~~
25 ~~Government Code. If necessary for compliance with this section,~~
26 ~~the one-year notice period may be extended, as specified by this~~
27 ~~subdivision.~~

28 ~~(1) If the one-year notice period lapses during the 30-day review~~
29 ~~period, or within 60 days following the notice of disapproval, it~~
30 ~~may be extended for a maximum of 90 days.~~

31 ~~(2) If the director and the chief approve the final rulemaking~~
32 ~~record or declines to take action on it within 30 days, the board,~~
33 ~~commission, or committee shall have five days from the receipt~~
34 ~~of the record from the director and the chief within which to file~~
35 ~~it with the Office of Administrative Law.~~

36 ~~(3) If the director or the chief disapproves a rule or regulation,~~
37 ~~it shall have no force or effect unless, within 60 days of the notice~~
38 ~~of disapproval, (A) the disapproval is overridden by a unanimous~~
39 ~~vote of the members of the board, commission, or committee, and~~
40 ~~(B) the board, commission, or committee files the final rulemaking~~

1 record with the Office of Administrative Law in compliance with
2 this section and the procedures required by Chapter 3.5
3 (commencing with Section 11340) of Part 1 of Division 3 of Title
4 2 of the Government Code.

5 (f) ~~Nothing in this section shall be construed to prohibit the~~
6 ~~director or the chief of the Office of the Consumer Advocate from~~
7 ~~affirmatively approving a proposed rule, regulation, or fee change~~
8 ~~at any time within the 30-day period after it has been submitted to~~
9 ~~him or her, in which event it shall become effective upon~~
10 ~~compliance with this section and the procedures required by~~
11 ~~Chapter 3.5 (commencing with Section 11340) of Part 1 of Division~~
12 ~~3 of Title 2 of the Government Code.~~

13 SEC. 18. Section 321 of the Business and Professions Code is
14 amended to read:

15 321. ~~Whenever it appears to the director or the chief of the~~
16 ~~Office of Consumer Advocate that the interests of the consumers~~
17 ~~of this state are being damaged, or may be damaged, by any person~~
18 ~~who engaged in, or intends to engage in, any acts or practices in~~
19 ~~violation of any law of this state, or any federal law, the director~~
20 ~~or any officer or employee designated by the director, or the~~
21 ~~Attorney General, may commence legal proceedings in the~~
22 ~~appropriate forum to enjoin those acts or practices and may seek~~
23 ~~other appropriate relief on behalf of those consumers.~~

24 SEC. 19. Chapter 4.5 (commencing with Section 360) is added
25 to Division 1 of the Business and Professions Code, to read:

26
27 CHAPTER 4.5. OFFICE OF THE CONSUMER ADVOCATE

28
29 Article 1. General Provisions

30
31 360. This chapter shall be known and may be cited as the Office
32 of the Consumer Advocate Act.

33 361. ~~It is the intent of the Legislature and the purpose of this~~
34 ~~chapter to promote the efficiency of each of the boards that~~
35 ~~comprise the department by ensuring that each board properly~~
36 ~~discharges its regulatory and disciplinary functions to protect the~~
37 ~~interests of consumers.~~

38 362. ~~The following definitions apply for purposes of this~~
39 ~~chapter:~~

40 (a) ~~“Board” means any entity listed in Section 101.~~

1 ~~(b) “Chief” means the chief of the Office of the Consumer~~
2 ~~Advocate.~~

3 ~~(c) “Interests of consumers” means the protection of the health,~~
4 ~~welfare, and safety of consumers by a board.~~

5 ~~(d) “Office” means the Office of the Consumer Advocate.~~

6

7

Article 2. Administration

8

9 ~~370. The Office of the Consumer Advocate is hereby~~
10 ~~established in the department.~~

11 ~~371. The office is under the supervision and control of a chief.~~
12 ~~The chief shall be appointed by the Governor, subject to~~
13 ~~confirmation by the Senate pursuant to Section 1322 of the~~
14 ~~Government Code. The chief shall be appointed for a term of four~~
15 ~~years. Upon expiration of the chief’s term, the chief shall continue~~
16 ~~to serve in the position until a new chief is appointed by the~~
17 ~~Governor. The director shall fix the amount of the chief’s~~
18 ~~compensation in accordance with law. The Governor may remove~~
19 ~~the chief for any cause specified in Section 106.~~

20 ~~372. The chief shall administer and enforce the provisions of~~
21 ~~this chapter. Every power granted or duty imposed upon the chief~~
22 ~~under this chapter may be exercised or performed in the name of~~
23 ~~the chief by an employee of the office, subject to any conditions~~
24 ~~and limitations the chief may prescribe.~~

25 ~~373. (a) The chief, in accordance with the State Civil Service~~
26 ~~Act, shall appoint a chief counsel of the office and an adequate~~
27 ~~number of attorneys, as determined by the chief counsel, to carry~~
28 ~~out the provisions of this chapter.~~

29 ~~(b) The chief, in accordance with the State Civil Service Act,~~
30 ~~may appoint and fix the compensation of clerical or other personnel~~
31 ~~as may be necessary to carry out the provisions of this chapter.~~

32 ~~(c) All personnel appointed under this section shall perform~~
33 ~~their duties under the supervision and direction of the chief.~~

34 ~~374. The chief may contract for the services of experts and~~
35 ~~consultants if necessary to carry out the provisions of this chapter~~
36 ~~and may provide compensation and reimbursement of expenses~~
37 ~~for those experts and consultants in accordance with state law.~~

Article 3. Powers and Duties

380. ~~(a) The office shall serve as an independent monitor pursuant to Section 474.22.~~

~~(b) The office shall review interagency agreements pursuant to Section 102.3.~~

381. ~~The chief may establish through regulations a Consumer Participation Program to allow the office to award reasonable advocacy and witness fees to any person or organization that has made a substantial contribution on behalf of the interests of consumers either through the adoption of a regulation by a board or through an order or decision issued by a board in a disciplinary proceeding.~~

382. ~~The office may appear at a meeting of a board and shall be permitted to participate as an amicus curiae in disciplinary proceedings by the board whenever the chief determines that the appearance or participation is required to promote or protect the interests of consumers. The office shall conform with the provisions of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) in discharging these duties.~~

383. ~~The chief shall have the following powers and it shall be his or her duty to take the following actions:~~

~~(a) Recommend and propose the enactment of legislation that is necessary to protect and promote the interests of consumers.~~

~~(b) Represent the interests of consumers before federal and state legislative and regulatory hearings.~~

~~(c) Assist, advise, and cooperate with federal, state, and local agencies and officials to protect and promote the interests of consumers.~~

~~(d) Study, investigate, research, and analyze matters affecting the interests of consumers.~~

~~(e) Hold public hearings, subpoena witnesses, take testimony, compel the production of books, papers, documents, and other evidence, and call upon state agencies for information.~~

~~(f) Propose and assist in the creation and development of consumer education programs.~~

~~(g) Promote ethical standards of conduct for business, professions, and consumers related to the interest of consumers.~~

1 ~~(h) Advise the Governor and Legislature on all matters affecting~~
2 ~~the interests of consumers.~~

3 ~~(i) Exercise and perform other functions, powers, and duties as~~
4 ~~may be deemed appropriate to protect and promote the interests~~
5 ~~of consumers as directed by the Governor or the Legislature.~~

6 ~~(j) Maintain contact and liaison with consumer groups in~~
7 ~~California and nationally.~~

8 ~~384. The chief shall report annually to the Governor and appear~~
9 ~~annually before the appropriate policy committees of the~~
10 ~~Legislature to report on the office's activities.~~

11
12 ~~Article 4. Revenue~~
13

14 ~~390. The office shall annually charge each board on a pro rata~~
15 ~~share basis an amount that is sufficient, as determined by the chief,~~
16 ~~to carry out the provisions of this chapter. The total amount of~~
17 ~~charges made pursuant to this section shall not exceed _____ million~~
18 ~~dollars (\$ _____) annually.~~

19 ~~391. All moneys collected pursuant to this article shall be~~
20 ~~deposited into the Consumer Advocate Fund, which is hereby~~
21 ~~created in the State Treasury. The revenue in this fund shall be~~
22 ~~expended solely for purposes of this chapter upon appropriation~~
23 ~~by the Legislature in the annual Budget Act.~~

24 ~~SEC. 20. Section 450.1 is added to the Business and Professions~~
25 ~~Code, to read:~~

26 ~~450.1. A person may serve as a public member of more than~~
27 ~~one board at the same time if not prohibited by any other law.~~

28 ~~SEC. 21. Division 1.2 (commencing with Section 473) of the~~
29 ~~Business and Professions Code is repealed.~~

30 ~~SEC. 22. Division 1.3 (commencing with Section 474.20) is~~
31 ~~added to the Business and Professions Code, to read:~~

32
33 ~~DIVISION 1.3. LEGISLATIVE REVIEW OF STATE~~
34 ~~BOARDS AND BOARDS WITHIN THE DEPARTMENT OF~~
35 ~~CONSUMER AFFAIRS~~
36

37 ~~474.20. (a) A Member of the Legislature or the chief of the~~
38 ~~Office of the Consumer Advocate may submit a written request~~
39 ~~to the appropriate standing policy committee of the Legislature to~~
40 ~~conduct an analysis to evaluate any of the following entities:~~

1 ~~(1) A board, as defined in Section 22.~~

2 ~~(2) A state board, as defined in Section 9148.2 of the~~
3 ~~Government Code.~~

4 ~~(b) The request made pursuant to subdivision (a) shall describe~~
5 ~~any perceived deficiencies in the operation of the board and the~~
6 ~~detailed reasons an analysis of its operation is requested that may~~
7 ~~include, but not be limited to, the issues subject to investigation~~
8 ~~under subdivision (c) of Section 474.21.~~

9 ~~474.21. (a) (1) The appropriate standing policy committee of~~
10 ~~the Legislature shall, through its oversight function, investigate~~
11 ~~the perceived deficiencies described in the request submitted~~
12 ~~pursuant to Section 474.20 and hold public hearings on the matter.~~
13 ~~The committee may request the Office of the Consumer Advocate~~
14 ~~to assist in the investigation. The committee shall complete these~~
15 ~~functions within a 60-day period during the regular legislative~~
16 ~~session, with the period commencing on the date of the committee's~~
17 ~~receipt of the request.~~

18 ~~(2) Notwithstanding paragraph (1), if, in the two-year period~~
19 ~~prior to the committee's receipt of the request, public hearings~~
20 ~~relating to the same board named in the request were held by a~~
21 ~~standing policy committee of the Legislature that determined no~~
22 ~~deficiencies exist, the committee may refuse to conduct additional~~
23 ~~hearings and investigation of the board.~~

24 ~~(b) The committee may find, on the basis of the information it~~
25 ~~obtained during its investigation, whether a question exists as to~~
26 ~~the highest priority of the operations of the board being the~~
27 ~~protection of the public when exercising its licensing, regulatory,~~
28 ~~and disciplinary functions, and whether the board is effectively~~
29 ~~protecting the public.~~

30 ~~(c) In determining whether a question exists under subdivision~~
31 ~~(b), the committee shall review the information and allegations~~
32 ~~made in the request submitted pursuant to Section 474.20 and any~~
33 ~~related information and allegations. The committee may review~~
34 ~~issues such as the following:~~

35 ~~(1) Whether regulation by the board is necessary to protect the~~
36 ~~public health, safety, and welfare.~~

37 ~~(2) Whether the initial reasons for licensing or regulating a~~
38 ~~practice or profession have changed.~~

1 ~~(3) Whether other conditions have occurred that would warrant~~
2 ~~increased, decreased, or the same amount of regulation by the~~
3 ~~board.~~

4 ~~(4) If regulation of the profession or practice is necessary,~~
5 ~~whether existing statutes and regulations establish the least~~
6 ~~restrictive form of regulation consistent with the public interest,~~
7 ~~considering other available regulatory mechanisms, and whether~~
8 ~~the board's rules promote the public interest and are within the~~
9 ~~scope of legislative intent.~~

10 ~~(5) Whether the board operates and enforces its regulatory~~
11 ~~responsibilities in the public interest and whether its regulatory~~
12 ~~mission is impeded or enhanced by existing statutes, regulations,~~
13 ~~policies, practices, or any other circumstances, including budgetary,~~
14 ~~resources, and personnel matters.~~

15 ~~(6) Whether an analysis of the board's operations indicates that~~
16 ~~the entity performs its statutory duties efficiently and effectively.~~

17 ~~(7) Whether the composition of the board adequately represents~~
18 ~~the public interest and whether the board encourages public~~
19 ~~participation in its decisions rather than participation only by the~~
20 ~~profession or vocation and the individuals it regulates.~~

21 ~~(8) Whether the board and its laws or regulations stimulate or~~
22 ~~restrict competition and the extent of the economic impact the~~
23 ~~board's regulatory practices have on the state's business and~~
24 ~~technological growth.~~

25 ~~(9) Whether complaint investigation, intervention, and~~
26 ~~disciplinary procedures adequately protect the public and whether~~
27 ~~the final disposition of complaints, investigations, restraining~~
28 ~~orders, and disciplinary actions are in the public interest or these~~
29 ~~procedures are, instead, self-serving to the profession, vocation,~~
30 ~~or individuals being regulated by the board.~~

31 ~~(10) Whether the scope of practice of the regulated profession~~
32 ~~or vocation contributes to the highest utilization of personnel and~~
33 ~~whether the entry requirements for the profession or vocation~~
34 ~~encourage affirmative action.~~

35 ~~(11) Whether administrative and statutory changes are necessary~~
36 ~~to improve the board's operations to promote the public interest.~~

37 ~~(d) The standing policy committee shall determine if a board is~~
38 ~~deficient. The committee shall report its deficiency determination~~
39 ~~to the Joint Committee on Rules. Notwithstanding any other~~
40 ~~provision of law, if a board is found deficient, each incumbent~~

1 member of the board shall be removed from office without a
2 hearing within 10 business days of receipt of the committee's
3 deficiency report by the Joint Committee on Rules, and successor
4 board members shall be appointed within that timeframe pursuant
5 to Section 101.1.

6 474.22. (a) Within 10 business days of the date the Joint
7 Committee on Rules receives the deficiency report described in
8 Section 474.21, the Office of the Consumer Advocate shall assume
9 the duties of an independent monitor for the board.

10 (b) Within one year of the date it assumes the duties of an
11 independent monitor, the Office of the Consumer Advocate shall
12 report its findings to the Governor, and the Legislature may make
13 recommendations for required reforms of the board.

14 SEC. 23. Section 1601.1 of the Business and Professions Code
15 is amended to read:

16 1601.1. (a) There shall be in the Department of Consumer
17 Affairs the Dental Board of California in which the administration
18 of this chapter is vested. The board shall consist of eight practicing
19 dentists, one registered dental hygienist, one registered dental
20 assistant, and four public members. Of the eight practicing dentists,
21 one shall be a member of a faculty of any California dental college
22 and one shall be a dentist practicing in a nonprofit community
23 clinic. The appointing powers, described in Section 1603, may
24 appoint to the board a person who was a member of the prior board.
25 The board shall be organized into standing committees dealing
26 with examinations, enforcement, and other subjects as the board
27 deems appropriate.

28 (b) For purposes of this chapter, any reference in this chapter
29 to the Board of Dental Examiners shall be deemed to refer to the
30 Dental Board of California.

31 (c) The board shall have all authority previously vested in the
32 existing board under this chapter. The board may enforce all
33 disciplinary actions undertaken by the previous board.

34 SEC. 24. Section 1632.5 of the Business and Professions Code
35 is amended to read:

36 1632.5. (a) Prior to implementation of paragraph (2) of
37 subdivision (c) of Section 1632, the department's Office of
38 Examination Resources shall review the Western Regional
39 Examining Board examination to assure compliance with the
40 requirements of Section 139 and to certify that the examination

1 ~~process meets those standards. If the department determines that~~
2 ~~the examination process fails to meet those standards, paragraph~~
3 ~~(2) of subdivision (c) of Section 1632 shall not be implemented.~~
4 ~~The review of the Western Regional Examining Board examination~~
5 ~~shall be conducted during or after the Dental Board of California's~~
6 ~~occupational analysis scheduled for the 2004-05 fiscal year, but~~
7 ~~not later than September 30, 2005. However, an applicant who~~
8 ~~successfully completes the Western Regional Examining Board~~
9 ~~examination on or after January 1, 2005, shall be deemed to have~~
10 ~~met the requirements of subdivision (c) of Section 1632 if the~~
11 ~~department certifies that the Western Regional Examining Board~~
12 ~~examination meets the standards set forth in this subdivision.~~

13 ~~(b) The Western Regional Examining Board examination~~
14 ~~process shall be regularly reviewed by the department pursuant to~~
15 ~~Section 139.~~

16 ~~(c) The Western Regional Examining Board examination shall~~
17 ~~meet the mandates of subdivision (a) of Section 12944 of the~~
18 ~~Government Code.~~

19 ~~(d) The Dental Board of California shall report on or before~~
20 ~~July 1, 2008, to the department and the Office of the Consumer~~
21 ~~Advocate on the pass rates of applicants who sat for the Western~~
22 ~~Regional Examining Board examination, compared with the pass~~
23 ~~rates of applicants who sat for the state clinical and written~~
24 ~~examination administered by the Dental Board of California. This~~
25 ~~report shall be a component of the evaluation of the examination~~
26 ~~process that is based on psychometrically sound principles for~~
27 ~~establishing minimum qualifications and levels of competency.~~

28 ~~SEC. 25. Section 1634.2 of the Business and Professions Code~~
29 ~~is amended to read:~~

30 ~~1634.2. (a) An advanced education program's compliance~~
31 ~~with subdivision (c) of Section 1634.1 shall be regularly reviewed~~
32 ~~by the department pursuant to Section 139.~~

33 ~~(b) An advanced education program described in subdivision~~
34 ~~(c) of Section 1634.1 shall meet the requirements of subdivision~~
35 ~~(a) of Section 12944 of the Government Code.~~

36 ~~(c) The clinical residency program completion certification~~
37 ~~required by subdivision (c) of Section 1634.1 shall include a list~~
38 ~~of core competencies commensurate to those found in the board's~~
39 ~~examinations. The board, together with the department's Office~~
40 ~~of Examination Resources, shall ensure the alignment of the~~

1 competencies stated in the clinical residency program completion
2 certification with the board's current occupational analysis. The
3 board shall implement use of the clinical residency program
4 completion certification form and use of the core competency list
5 through the adoption of emergency regulations by January 1, 2008.

6 (d) The board shall report to the department and the Office of
7 the Consumer Advocate on or before January 1, 2010, the number
8 of complaints received for those dentists who have obtained
9 licensure by passing the state clinical examination and for those
10 dentists who have obtained licensure through an advanced
11 education program. The report shall also contain tracking
12 information on these complaints and their disposition. This report
13 shall be a component of the evaluation of the examination process
14 that is based on psychometrically sound principles for establishing
15 minimum qualifications and levels of competency.

16 SEC. 26. Section 1638.1 of the Business and Professions Code
17 is amended to read:

18 1638.1. (a) (1) A person licensed pursuant to Section 1634
19 who wishes to perform elective facial cosmetic surgery shall first
20 apply for and receive a permit to perform elective facial cosmetic
21 surgery from the board.

22 (2) A permit issued pursuant to this section shall be valid for a
23 period of two years and must be renewed by the permitholder at
24 the time his or her license is renewed. Every six years, prior to
25 renewal of the permitholder's license and permit, the permitholder
26 shall submit evidence acceptable to the credentialing committee
27 that he or she has maintained continued competence to perform
28 the procedures authorized by the permit. The credentialing
29 committee may limit a permit consistent with paragraph (1) of
30 subdivision (e) if it is not satisfied that the permitholder has
31 established continued competence.

32 (b) The board may adopt regulations for the issuance of the
33 permit that it deems necessary to protect the health, safety, and
34 welfare of the public.

35 (c) A licensee may obtain a permit to perform elective facial
36 cosmetic surgery by furnishing all of the following information
37 on an application form approved by the board:

38 (1) Proof of successful completion of an oral and maxillofacial
39 surgery residency program accredited by the Commission on Dental
40 Accreditation of the American Dental Association.

1 ~~(2) Proof that the applicant has satisfied the criteria specified~~
2 ~~in either subparagraph (A) or (B):~~

3 ~~(A) (i) Is certified, or is a candidate for certification, by the~~
4 ~~American Board of Oral and Maxillofacial Surgery.~~

5 ~~(ii) Submits to the board a letter from the program director of~~
6 ~~the accredited residency program, or from the director of a~~
7 ~~postresidency fellowship program accredited by the Commission~~
8 ~~on Dental Accreditation of the American Dental Association,~~
9 ~~stating that the licensee has the education, training, and competence~~
10 ~~necessary to perform the surgical procedures that the licensee has~~
11 ~~notified the board he or she intends to perform.~~

12 ~~(iii) Submits documentation to the board of at least 10 operative~~
13 ~~reports from residency training or proctored procedures that are~~
14 ~~representative of procedures that the licensee intends to perform~~
15 ~~from both of the following categories:~~

16 ~~(I) Cosmetic contouring of the osteocartilaginous facial structure,~~
17 ~~which may include, but is not limited to, rhinoplasty and otoplasty.~~

18 ~~(II) Cosmetic soft tissue contouring or rejuvenation, which may~~
19 ~~include, but is not limited to, facelift, blepharoplasty, facial skin~~
20 ~~resurfacing, or lip augmentation.~~

21 ~~(iv) Submits documentation to the board showing the surgical~~
22 ~~privileges the applicant possesses at any licensed general acute~~
23 ~~care hospital and any licensed outpatient surgical facility in this~~
24 ~~state.~~

25 ~~(B) (i) Has been granted privileges by the medical staff at a~~
26 ~~licensed general acute care hospital to perform the surgical~~
27 ~~procedures set forth in paragraph (A) at that hospital.~~

28 ~~(ii) Submits to the board the documentation described in clause~~
29 ~~(iii) of subparagraph (A).~~

30 ~~(3) Proof that the applicant is on active status on the staff of a~~
31 ~~general acute care hospital and maintains the necessary privileges~~
32 ~~based on the bylaws of the hospital to maintain that status.~~

33 ~~(d) The application shall be accompanied by an application fee~~
34 ~~of five hundred dollars (\$500) for an initial permit. The fee to~~
35 ~~renew a permit shall be two hundred dollars (\$200).~~

36 ~~(e) (1) The board shall appoint a credentialing committee to~~
37 ~~review the qualifications of each applicant for a permit. Upon~~
38 ~~completion of the review of an applicant, the committee shall make~~
39 ~~a recommendation to the board on whether to issue or not issue a~~
40 ~~permit to the applicant. The permit may be unqualified, entitling~~

1 the permit holder to perform any facial cosmetic surgical procedure
2 authorized by this section, or it may contain limitations if the
3 credentialing committee is not satisfied that the applicant has the
4 training or competence to perform certain classes of procedures,
5 or if the applicant has not requested to be permitted for all
6 procedures authorized by this section.

7 (2) The credentialing committee shall be comprised of five
8 members, as follows:

9 (A) A physician and surgeon with a specialty in plastic and
10 reconstructive surgery who maintains active status on the staff of
11 a licensed general acute care hospital in this state.

12 (B) A physician and surgeon with a specialty in otolaryngology
13 who maintains active status on the staff of a licensed general acute
14 care hospital in this state.

15 (C) Three oral and maxillofacial surgeons licensed by the board
16 who are board certified by the American Board of Oral and
17 Maxillofacial Surgeons, and who maintain active status on the
18 staff of a licensed general acute care hospital in this state, at least
19 one of whom shall be licensed as a physician and surgeon in this
20 state. Two years after the effective date of this section, any oral
21 and maxillofacial surgeon appointed to the committee who is not
22 licensed as a physician and surgeon shall hold a permit pursuant
23 to this section.

24 (3) The board shall solicit from the following organizations
25 input and recommendations regarding members to be appointed
26 to the credentialing committee:

27 (A) The Medical Board of California.

28 (B) The California Dental Association.

29 (C) The California Association of Oral and Maxillofacial
30 Surgeons.

31 (D) The California Medical Association.

32 (E) The California Society of Plastic Surgeons.

33 (F) Any other source that the board deems appropriate.

34 (4) The credentialing committee shall meet at a time and place
35 directed by the board to evaluate applicants for permits. A quorum
36 of three members shall be required for the committee to consider
37 applicants and make recommendations to the board.

38 (f) A licensee may not perform any elective, facial cosmetic
39 surgical procedure except at a general acute care hospital, a licensed
40 outpatient surgical facility, or an outpatient surgical facility

1 accredited by the Joint Commission on Accreditation of Healthcare
2 Organizations (JCAHO), the American Association for Ambulatory
3 Health Care (AAAHC), the Medicare program, or an accreditation
4 agency approved by the Medical Board of California pursuant to
5 subdivision (g) of Section 1248.1 of the Health and Safety Code.

6 (g) For purposes of this section, the following terms shall have
7 the following meanings:

8 (1) "Elective cosmetic surgery" means any procedure defined
9 as cosmetic surgery in subdivision (d) of Section 1367.63 of the
10 Health and Safety Code, and excludes any procedure that
11 constitutes reconstructive surgery, as defined in subdivision (c) of
12 Section 1367.63 of the Health and Safety Code.

13 (2) "Facial" means those regions of the human body described
14 in Section 1625 and in any regulations adopted pursuant to that
15 section by the board.

16 (h) A holder of a permit issued pursuant to this section shall not
17 perform elective facial cosmetic surgical procedures unless he or
18 she has malpractice insurance or other financial security protection
19 that would satisfy the requirements of Section 2216.2 and any
20 regulations adopted thereunder.

21 (i) A holder of a permit shall comply with the requirements of
22 subparagraph (D) of paragraph (2) of subdivision (a) of Section
23 1248.15 of the Health and Safety Code, and the reporting
24 requirements specified in Section 2240, with respect to any surgical
25 procedure authorized by this section, in the same manner as a
26 physician and surgeon.

27 (j) Any violation of this section constitutes unprofessional
28 conduct and is grounds for the revocation or suspension of the
29 person's permit, license, or both, or the person may be reprimanded
30 or placed on probation. Proceedings initiated by the board under
31 this section shall be conducted in accordance with Chapter 5
32 (commencing with Section 11500) of Part 1 of Division 3 of Title
33 2 of the Government Code, and the board shall have all the powers
34 granted therein.

35 (k) On or before January 1, 2009, and every four years thereafter,
36 the board shall report to the Legislature and the Office of the
37 Consumer Advocate on all of the following:

38 (1) The number of persons licensed pursuant to Section 1634
39 who apply to receive a permit to perform elective facial cosmetic
40 surgery from the board pursuant to subdivision (a).

- 1 ~~(2) The recommendations of the credentialing committee to the~~
2 ~~board.~~
- 3 ~~(3) The board's action on recommendations received by the~~
4 ~~credentialing committee.~~
- 5 ~~(4) The number of persons receiving a permit from the board~~
6 ~~to perform elective facial cosmetic surgery.~~
- 7 ~~(5) The number of complaints filed by or on behalf of patients~~
8 ~~who have received elective facial cosmetic surgery by persons~~
9 ~~who have received a permit from the board to perform elective~~
10 ~~facial cosmetic surgery.~~
- 11 ~~(6) Action taken by the board resulting from complaints filed~~
12 ~~by or on behalf of patients who have received elective facial~~
13 ~~cosmetic surgery by persons who have received a permit from the~~
14 ~~board to perform elective facial cosmetic surgery.~~
- 15 ~~SEC. 27. Section 1638.7 of the Business and Professions Code~~
16 ~~is amended to read:~~
- 17 ~~1638.7. The next occupational analysis of dental licensees and~~
18 ~~oral and maxillofacial facial surgeons pursuant to Section 139 shall~~
19 ~~include a survey of the training and practices of oral and~~
20 ~~maxillofacial surgeons and, upon completion of that analysis, a~~
21 ~~report shall be made to the Legislature and the Office of the~~
22 ~~Consumer Advocate regarding the findings.~~
- 23 ~~SEC. 28. Section 1742 of the Business and Professions Code~~
24 ~~is amended to read:~~
- 25 ~~1742. (a) There is within the jurisdiction of the board a~~
26 ~~Committee on Dental Auxiliaries.~~
- 27 ~~(b) The Committee on Dental Auxiliaries shall have the~~
28 ~~following areas of responsibility and duties:~~
- 29 ~~(1) The committee shall have the following duties and authority~~
30 ~~related to education programs and curriculum:~~
- 31 ~~(A) Shall evaluate all dental auxiliary programs applying for~~
32 ~~board approval in accordance with board rules governing the~~
33 ~~programs.~~
- 34 ~~(B) May appoint board members to any evaluation committee.~~
35 ~~Board members so appointed shall not make a final decision on~~
36 ~~the issue of program or course approval.~~
- 37 ~~(C) Shall report and make recommendations to the board as to~~
38 ~~whether a program or course qualifies for approval. The board~~
39 ~~retains the final authority to grant or deny approval to a program~~
40 ~~or course.~~

1 ~~(D) Shall review and document any alleged deficiencies that~~
2 ~~might warrant board action to withdraw or revoke approval of a~~
3 ~~program or course, at the request of the board.~~

4 ~~(E) May review and document any alleged deficiencies that~~
5 ~~might warrant board action to withdraw or revoke approval of a~~
6 ~~program or course, at its own initiation.~~

7 ~~(2) The committee shall have the following duties and authority~~
8 ~~related to applications:~~

9 ~~(A) Shall review and evaluate all applications for licensure in~~
10 ~~the various dental auxiliary categories to ascertain whether a~~
11 ~~candidate meets the appropriate licensing requirements specified~~
12 ~~by statute and board regulations.~~

13 ~~(B) Shall maintain application records, cashier application fees,~~
14 ~~and perform any other ministerial tasks as are incidental to the~~
15 ~~application process.~~

16 ~~(C) May delegate any or all of the functions in this paragraph~~
17 ~~to its staff.~~

18 ~~(D) Shall issue auxiliary licenses in all cases, except where there~~
19 ~~is a question as to a licensing requirement. The board retains final~~
20 ~~authority to interpret any licensing requirement. If a question arises~~
21 ~~in the area of interpreting any licensing requirement, it shall be~~
22 ~~presented by the committee to the board for resolution.~~

23 ~~(3) The committee shall have the following duties and authority~~
24 ~~regarding examinations:~~

25 ~~(A) Shall advise the board as to the type of license examination~~
26 ~~it deems appropriate for the various dental auxiliary license~~
27 ~~categories.~~

28 ~~(B) Shall, at the direction of the board, develop or cause to be~~
29 ~~developed, administer, or both, examinations in accordance with~~
30 ~~the board's instructions and periodically report to the board on the~~
31 ~~progress of those examinations. The following shall apply to the~~
32 ~~examination procedure:~~

33 ~~(i) The examination shall be submitted to the board for its~~
34 ~~approval prior to its initial administration.~~

35 ~~(ii) Once an examination has been approved by the board, no~~
36 ~~further approval is required unless a major modification is made~~
37 ~~to the examination.~~

38 ~~(iii) The committee shall report to the board on the results of~~
39 ~~each examination and shall, where appropriate, recommend pass~~
40 ~~points.~~

1 ~~(iv) The board shall set pass points for all dental auxiliary~~
2 ~~licensing examinations.~~

3 ~~(C) May appoint board members to any examination committee~~
4 ~~established pursuant to subparagraph (B).~~

5 ~~(4) The committee shall periodically report and make~~
6 ~~recommendations to the board concerning the level of fees for~~
7 ~~dental auxiliaries and the need for any legislative fee increase.~~
8 ~~However, the board retains final authority to set all fees.~~

9 ~~(5) The committee shall be responsible for all aspects of the~~
10 ~~license renewal process, which shall be accomplished in accordance~~
11 ~~with this chapter and board regulations. The committee may~~
12 ~~delegate any or all of its functions under this paragraph to its staff.~~

13 ~~(6) The committee shall have no authority with respect to the~~
14 ~~approval of continuing education providers and the board retains~~
15 ~~all of this authority.~~

16 ~~(7) The committee shall advise the board as to appropriate~~
17 ~~standards of conduct for auxiliaries, the proper ordering of~~
18 ~~enforcement priorities, and any other enforcement-related matters~~
19 ~~that the board may, in the future, delegate to the committee. The~~
20 ~~board shall retain all authority with respect to the enforcement~~
21 ~~actions, including, but not limited to, complaint resolution,~~
22 ~~investigation, and disciplinary action against auxiliaries.~~

23 ~~(8) The committee shall have the following duties regarding~~
24 ~~regulations:~~

25 ~~(A) To review and evaluate all suggestions or requests for~~
26 ~~regulatory changes related to dental auxiliaries.~~

27 ~~(B) To report and make recommendations to the board, after~~
28 ~~consultation with departmental legal counsel and the board's~~
29 ~~executive officer.~~

30 ~~(C) To include in any report regarding a proposed regulatory~~
31 ~~change, at a minimum, the specific language of the proposed~~
32 ~~changes and the reasons for and facts supporting the need for the~~
33 ~~change. The board has the final rulemaking authority.~~

34 ~~SEC. 29. Section 1751 of the Business and Professions Code,~~
35 ~~as amended by Section 8 of Chapter 621 of the Statutes of 2005,~~
36 ~~is amended to read:~~

37 ~~1751. (a) The board, upon recommendation of the committee,~~
38 ~~shall adopt regulations governing the procedures that dental~~
39 ~~assistants, registered orthodontic assistants, registered surgery~~
40 ~~assistants, registered restorative assistants, registered dental~~

1 assistants, registered restorative assistants in extended functions;
2 and registered dental assistants in extended functions are authorized
3 to perform consistent with and necessary to implement the
4 provisions of this article, and the settings within which each may
5 practice.

6 (b) The board shall conduct an initial review of the procedures,
7 supervision level, settings under which they may be performed,
8 and utilization of extended functions dental auxiliaries by January
9 1, 2012. The board shall submit the results of its review to the
10 Legislature and the Office of the Consumer Advocate. After the
11 initial review, a review shall be conducted at least once every five
12 to seven years thereafter, and the board shall update regulations
13 as necessary to keep them current with the state of dental practice.

14 (c) This section shall become operative on January 1, 2008.

15 SEC. 30. Section 2001 of the Business and Professions Code
16 is amended to read:

17 2001. There is in the Department of Consumer Affairs a
18 Medical Board of California that consists of 21 members, nine of
19 whom shall be public members.

20 The Governor shall appoint 19 members to the board, subject
21 to confirmation by the Senate, seven of whom shall be public
22 members. The Senate Rules Committee and the Speaker of the
23 Assembly shall each appoint a public member, and their initial
24 appointment shall be made to fill, respectively, the first and second
25 public member vacancies that occur on or after January 1, 1983.

26 SEC. 31. Section 2460 of the Business and Professions Code
27 is amended to read:

28 2460. There is created within the jurisdiction of the Medical
29 Board of California and its divisions the California Board of
30 Podiatric Medicine.

31 SEC. 32. Section 2531 of the Business and Professions Code
32 is amended to read:

33 2531. There is in the Department of Consumer Affairs a
34 Speech-Language Pathology and Audiology Board in which the
35 enforcement and administration of this chapter is vested. The
36 Speech-Language Pathology and Audiology Board shall consist
37 of nine members, three of whom shall be public members.

38 SEC. 33. Section 2569 of the Business and Professions Code
39 is repealed.

1 ~~SEC. 34. Section 2570.19 of the Business and Professions~~
2 ~~Code is amended to read:~~
3 ~~2570.19. (a) There is hereby created a California Board of~~
4 ~~Occupational Therapy, hereafter referred to as the board. The board~~
5 ~~shall enforce and administer this chapter.~~
6 ~~(b) The members of the board shall consist of the following:~~
7 ~~(1) Three occupational therapists who shall have practiced~~
8 ~~occupational therapy for five years.~~
9 ~~(2) One occupational therapy assistant who shall have assisted~~
10 ~~in the practice of occupational therapy for five years.~~
11 ~~(3) Three public members who shall not be licentiates of the~~
12 ~~board or of any board referred to in Section 1000 or 3600.~~
13 ~~(c) The Governor shall appoint the three occupational therapists~~
14 ~~and one occupational therapy assistant to be members of the board.~~
15 ~~The Governor, the Senate Rules Committee, and the Speaker of~~
16 ~~the Assembly shall each appoint a public member. Not more than~~
17 ~~one member of the board shall be appointed from the full-time~~
18 ~~faculty of any university, college, or other educational institution.~~
19 ~~(d) All members shall be residents of California at the time of~~
20 ~~their appointment. The occupational therapist and occupational~~
21 ~~therapy assistant members shall have been engaged in rendering~~
22 ~~occupational therapy services to the public, teaching, or research~~
23 ~~in occupational therapy for at least five years preceding their~~
24 ~~appointments.~~
25 ~~(e) The public members may not be or have ever been~~
26 ~~occupational therapists or occupational therapy assistants or in~~
27 ~~training to become occupational therapists or occupational therapy~~
28 ~~assistants. The public members may not be related to, or have a~~
29 ~~household member who is, an occupational therapist or an~~
30 ~~occupational therapy assistant, and may not have had, within two~~
31 ~~years of the appointment, a substantial financial interest in a person~~
32 ~~regulated by the board.~~
33 ~~(f) The Governor shall appoint two board members for a term~~
34 ~~of one year, two board members for a term of two years, and one~~
35 ~~board member for a term of three years. Appointments made~~
36 ~~thereafter shall be for four-year terms, but no person shall be~~
37 ~~appointed to serve more than two consecutive terms. Terms shall~~
38 ~~begin on the first day of the calendar year and end on the last day~~
39 ~~of the calendar year or until successors are appointed, except for~~
40 ~~the first appointed members who shall serve through the last~~

1 calendar day of the year in which they are appointed, before
2 commencing the terms prescribed by this section. Vacancies shall
3 be filled by appointment for the unexpired term. The board shall
4 annually elect one of its members as president.

5 (g) The board shall meet and hold at least one regular meeting
6 annually in the Cities of Sacramento, Los Angeles, and San
7 Francisco. The board may convene from time to time until its
8 business is concluded. Special meetings of the board may be held
9 at any time and place designated by the board.

10 (h) Notice of each meeting of the board shall be given in
11 accordance with the Bagley-Keene Open Meeting Act (Article 9
12 commencing with Section 11120) of Chapter 1 of Part 1 of
13 Division 3 of Title 2 of the Government Code).

14 (i) Members of the board shall receive no compensation for
15 their services, but shall be entitled to reasonable travel and other
16 expenses incurred in the execution of their powers and duties in
17 accordance with Section 103.

18 (j) The appointing power shall have the power to remove any
19 member of the board from office for neglect of any duty imposed
20 by state law, for incompetency, or for unprofessional or
21 dishonorable conduct.

22 (k) A loan is hereby authorized from the General Fund to the
23 Occupational Therapy Fund on or after July 1, 2000, in an amount
24 of up to one million dollars (\$1,000,000) to fund operating,
25 personnel, and other startup costs of the board. Six hundred ten
26 thousand dollars (\$610,000) of this loan amount is hereby
27 appropriated to the board to use in the 2000-01 fiscal year for the
28 purposes described in this subdivision. In subsequent years, funds
29 from the Occupational Therapy Fund shall be available to the board
30 upon appropriation by the Legislature in the annual Budget Act.
31 The loan shall be repaid to the General Fund over a period of up
32 to five years, and the amount paid shall also include interest at the
33 rate accruing to moneys in the Pooled Money Investment Account.
34 The loan amount and repayment period shall be minimized to the
35 extent possible based upon actual board financing requirements
36 as determined by the Department of Finance.

37 SEC. 35. Section 2602 of the Business and Professions Code
38 is amended to read:

39 2602. The Physical Therapy Board of California, hereafter
40 referred to as the board, shall enforce and administer this chapter.

1 SEC. 36. ~~Section 2701 of the Business and Professions Code~~
2 ~~is amended to read:~~

3 ~~2701. There is in the Department of Consumer Affairs the~~
4 ~~Board of Registered Nursing consisting of nine members.~~

5 ~~Within the meaning of this chapter, board, or the board, refers~~
6 ~~to the Board of Registered Nursing. Any reference in state law to~~
7 ~~the Board of Nurse Examiners of the State of California or~~
8 ~~California Board of Nursing Education and Nurse Registration~~
9 ~~shall be construed to refer to the Board of Registered Nursing.~~

10 SEC. 37. ~~Section 2841 of the Business and Professions Code~~
11 ~~is amended to read:~~

12 ~~2841. There is in the Department of Consumer Affairs a Board~~
13 ~~of Vocational Nursing and Psychiatric Technicians of the State of~~
14 ~~California, consisting of 11 members.~~

15 ~~Within the meaning of this chapter, board, or the board, refers~~
16 ~~to the Board of Vocational Nursing and Psychiatric Technicians~~
17 ~~of the State of California.~~

18 SEC. 38. ~~Section 2920 of the Business and Professions Code~~
19 ~~is amended to read:~~

20 ~~2920. The Board of Psychology shall enforce and administer~~
21 ~~this chapter. The board shall consist of nine members, four of~~
22 ~~whom shall be public members.~~

23 SEC. 39. ~~Section 3010.5 of the Business and Professions Code~~
24 ~~is amended to read:~~

25 ~~3010.5. (a) There is in the Department of Consumer Affairs~~
26 ~~a State Board of Optometry in which the enforcement of this~~
27 ~~chapter is vested. The board consists of 11 members, five of whom~~
28 ~~shall be public members.~~

29 ~~Six members of the board shall constitute a quorum.~~

30 ~~(b) The board shall, with respect to conducting investigations,~~
31 ~~inquiries, and disciplinary actions and proceedings, have the~~
32 ~~authority previously vested in the board as created pursuant to~~
33 ~~Section 3010. The board may enforce any disciplinary actions~~
34 ~~undertaken by that board.~~

35 SEC. 40. ~~Section 3502.1 of the Business and Professions Code~~
36 ~~is amended to read:~~

37 ~~3502.1. (a) In addition to the services authorized in the~~
38 ~~regulations adopted by the board, and except as prohibited by~~
39 ~~Section 3502, while under the supervision of a licensed physician~~
40 ~~and surgeon or physicians and surgeons authorized by law to~~

1 ~~supervise a physician assistant, a physician assistant may~~
2 ~~administer or provide medication to a patient, or transmit orally,~~
3 ~~or in writing on a patient's record or in a drug order, an order to a~~
4 ~~person who may lawfully furnish the medication or medical device~~
5 ~~pursuant to subdivisions (c) and (d).~~

6 (1) ~~A supervising physician and surgeon who delegates authority~~
7 ~~to issue a drug order to a physician assistant may limit this authority~~
8 ~~by specifying the manner in which the physician assistant may~~
9 ~~issue delegated prescriptions.~~

10 (2) ~~Each supervising physician and surgeon who delegates the~~
11 ~~authority to issue a drug order to a physician assistant shall first~~
12 ~~prepare and adopt, or adopt, a written, practice-specific, formulary~~
13 ~~and protocols that specify all criteria for the use of a particular~~
14 ~~drug or device, and any contraindications for the selection. The~~
15 ~~drugs listed shall constitute the formulary and shall include only~~
16 ~~drugs that are appropriate for use in the type of practice engaged~~
17 ~~in by the supervising physician and surgeon. When issuing a drug~~
18 ~~order, the physician assistant is acting on behalf of and as an agent~~
19 ~~for a supervising physician and surgeon.~~

20 (b) ~~"Drug order" for purposes of this section means an order~~
21 ~~for medication which is dispensed to or for a patient, issued and~~
22 ~~signed by a physician assistant acting as an individual practitioner~~
23 ~~within the meaning of Section 1306.02 of Title 21 of the Code of~~
24 ~~Federal Regulations. Notwithstanding any other provision of law,~~
25 ~~(1) a drug order issued pursuant to this section shall be treated in~~
26 ~~the same manner as a prescription or order of the supervising~~
27 ~~physician, (2) all references to "prescription" in this code and the~~
28 ~~Health and Safety Code shall include drug orders issued by~~
29 ~~physician assistants pursuant to authority granted by their~~
30 ~~supervising physicians, and (3) the signature of a physician~~
31 ~~assistant on a drug order shall be deemed to be the signature of a~~
32 ~~prescriber for purposes of this code and the Health and Safety~~
33 ~~Code.~~

34 (c) ~~A drug order for any patient cared for by the physician~~
35 ~~assistant that is issued by the physician assistant shall either be~~
36 ~~based on the protocols described in subdivision (a) or shall be~~
37 ~~approved by the supervising physician before it is filled or carried~~
38 ~~out.~~

39 (1) ~~A physician assistant shall not administer or provide a drug~~
40 ~~or issue a drug order for a drug other than for a drug listed in the~~

1 formulary without advance approval from a supervising physician
2 and surgeon for the particular patient. At the direction and under
3 the supervision of a physician and surgeon, a physician assistant
4 may hand to a patient of the supervising physician and surgeon a
5 properly labeled prescription drug prepackaged by a physician and
6 surgeon, manufacturer as defined in the Pharmacy Law, or a
7 pharmacist.

8 (2) A physician assistant may not administer, provide or issue
9 a drug order for Schedule II through Schedule V controlled
10 substances without advance approval by a supervising physician
11 and surgeon for the particular patient.

12 (3) Any drug order issued by a physician assistant shall be
13 subject to a reasonable quantitative limitation consistent with
14 customary medical practice in the supervising physician and
15 surgeon's practice.

16 (d) A written drug order issued pursuant to subdivision (a),
17 except a written drug order in a patient's medical record in a health
18 facility or medical practice, shall contain the printed name, address,
19 and phone number of the supervising physician and surgeon, the
20 printed or stamped name and license number of the physician
21 assistant, and the signature of the physician assistant. Further, a
22 written drug order for a controlled substance, except a written drug
23 order in a patient's medical record in a health facility or a medical
24 practice, shall include the federal controlled substances registration
25 number of the physician assistant. The requirements of this
26 subdivision may be met through stamping or otherwise imprinting
27 on the supervising physician and surgeon's prescription blank to
28 show the name, license number, and if applicable, the federal
29 controlled substances number of the physician assistant, and shall
30 be signed by the physician assistant. When using a drug order, the
31 physician assistant is acting on behalf of and as the agent of a
32 supervising physician and surgeon.

33 (e) The medical record of any patient cared for by a physician
34 assistant for whom the supervising physician and surgeon's
35 Schedule II drug order has been issued or carried out shall be
36 reviewed and countersigned and dated by a supervising physician
37 and surgeon within seven days.

38 (f) All physician assistants who are authorized by their
39 supervising physicians to issue drug orders for controlled

1 substances shall register with the United States Drug Enforcement
2 Administration (DEA).

3 ~~(g) The committee shall consult with the Medical Board of~~
4 ~~California and report to the Legislature and the Office of the~~
5 ~~Consumer Advocate periodically, as necessary, on the impacts of~~
6 ~~exempting Schedule III and Schedule IV drug orders from the~~
7 ~~requirement for a physician and surgeon to review and countersign~~
8 ~~the affected medical record of a patient.~~

9 SEC. 41. ~~Section 3504 of the Business and Professions Code~~
10 ~~is amended to read:~~

11 ~~3504. There is established a Physician Assistant Committee~~
12 ~~of the Medical Board of California. The committee consists of~~
13 ~~nine members.~~

14 SEC. 42. ~~Section 3685 of the Business and Professions Code~~
15 ~~is amended to read:~~

16 ~~3685. The provisions of Article 8 (commencing with Section~~
17 ~~3680) shall become operative on January 1, 2004, but the remaining~~
18 ~~provisions of this chapter shall become operative on July 1, 2004.~~
19 ~~It is the intent of the Legislature that the initial implementation of~~
20 ~~this chapter be administered by fees collected in advance from~~
21 ~~applicants. Therefore, the bureau shall have the power and authority~~
22 ~~to establish fees and receive applications for licensure or intents~~
23 ~~to file application statements on and after January 1, 2004. The~~
24 ~~department shall certify that sufficient funds are available prior to~~
25 ~~implementing this chapter. Funds from the General Fund may not~~
26 ~~be used for the purpose of implementing this chapter.~~

27 SEC. 43. ~~Section 3710 of the Business and Professions Code~~
28 ~~is amended to read:~~

29 ~~3710. The Respiratory Care Board of California, hereafter~~
30 ~~referred to as the board, shall enforce and administer this chapter.~~

31 SEC. 44. ~~Section 4001 of the Business and Professions Code~~
32 ~~is amended to read:~~

33 ~~4001. (a) There is in the Department of Consumer Affairs a~~
34 ~~California State Board of Pharmacy in which the administration~~
35 ~~and enforcement of this chapter is vested. The board consists of~~
36 ~~13 members.~~

37 ~~(b) The Governor shall appoint seven competent pharmacists~~
38 ~~who reside in different parts of the state to serve as members of~~
39 ~~the board. The Governor shall appoint four public members, and~~
40 ~~the Senate Committee on Rules and the Speaker of the Assembly~~

1 shall each appoint a public member who shall not be a licensee of
2 the board, any other board under this division, or any board referred
3 to in Section 1000 or 3600.

4 (c) ~~At least five of the seven pharmacist appointees to the board~~
5 ~~shall be pharmacists who are actively engaged in the practice of~~
6 ~~pharmacy. Additionally, the membership of the board shall include~~
7 ~~at least one pharmacist representative from each of the following~~
8 ~~practice settings: an acute care hospital, an independent community~~
9 ~~pharmacy, a chain community pharmacy, and a long-term health~~
10 ~~care or skilled nursing facility. The pharmacist appointees shall~~
11 ~~also include a pharmacist who is a member of a labor union that~~
12 ~~represents pharmacists. For the purposes of this subdivision, a~~
13 ~~“chain community pharmacy” means a chain of 75 or more stores~~
14 ~~in California under the same ownership, and an “independent~~
15 ~~community pharmacy” means a pharmacy owned by a person or~~
16 ~~entity who owns no more than four pharmacies in California.~~

17 (d) ~~Members of the board shall be appointed for a term of four~~
18 ~~years. No person shall serve as a member of the board for more~~
19 ~~than two consecutive terms. Each member shall hold office until~~
20 ~~the appointment and qualification of his or her successor or until~~
21 ~~one year shall have elapsed since the expiration of the term for~~
22 ~~which the member was appointed, whichever first occurs.~~
23 ~~Vacancies occurring shall be filled by appointment for the~~
24 ~~unexpired term.~~

25 (e) ~~Each member of the board shall receive a per diem and~~
26 ~~expenses as provided in Section 103.~~

27 SEC. 45. ~~Section 4003 of the Business and Professions Code~~
28 ~~is amended to read:~~

29 4003. (a) ~~The board may appoint a person exempt from civil~~
30 ~~service who shall be designated as an executive officer and who~~
31 ~~shall exercise the powers and perform the duties delegated by the~~
32 ~~board and vested in him or her by this chapter. The executive~~
33 ~~officer may or may not be a member of the board as the board may~~
34 ~~determine.~~

35 (b) ~~The executive officer shall receive the compensation as~~
36 ~~established by the board with the approval of the Director of~~
37 ~~Finance. The executive officer shall also be entitled to travel and~~
38 ~~other expenses necessary in the performance of his or her duties.~~

1 ~~(c) The executive officer shall maintain and update in a timely~~
2 ~~fashion records containing the names, titles, qualifications, and~~
3 ~~places of business of all persons subject to this chapter.~~

4 ~~(d) The executive officer shall give receipts for all money~~
5 ~~received by him or her and pay it to the Department of Consumer~~
6 ~~Affairs, taking its receipt therefor. Besides the duties required by~~
7 ~~this chapter, the executive officer shall perform other duties~~
8 ~~pertaining to the office as may be required of him or her by the~~
9 ~~board.~~

10 ~~SEC. 46. Section 4200.1 of the Business and Professions Code~~
11 ~~is amended to read:~~

12 ~~4200.1. (a) Notwithstanding Section 135, an applicant may~~
13 ~~take the North American Pharmacist Licensure Examination four~~
14 ~~times, and may take the Multi-State Pharmacy Jurisprudence~~
15 ~~Examination for California four times.~~

16 ~~(b) Notwithstanding Section 135, an applicant may take the~~
17 ~~North American Pharmacist Licensure Examination and the~~
18 ~~Multi-State Pharmacy Jurisprudence Examination for California~~
19 ~~four additional times each if he or she successfully completes, at~~
20 ~~minimum, 16 additional semester units of education in pharmacy~~
21 ~~as approved by the board.~~

22 ~~(c) The applicant shall comply with the requirements of Section~~
23 ~~4200 for each application for reexamination made pursuant to~~
24 ~~subdivision (b).~~

25 ~~(d) An applicant may use the same coursework to satisfy the~~
26 ~~additional educational requirement for each examination under~~
27 ~~subdivision (b), if the coursework was completed within 12 months~~
28 ~~of the date of his or her application for reexamination.~~

29 ~~(e) For purposes of this section, the board shall treat each failing~~
30 ~~score on the pharmacist licensure examination administered by~~
31 ~~the board prior to January 1, 2004, as a failing score on both the~~
32 ~~North American Pharmacist Licensure Examination and the~~
33 ~~Multi-State Pharmacy Jurisprudence Examination for California.~~

34 ~~(f) From January 1, 2004, to July 1, 2008, inclusive, the board~~
35 ~~shall collect data on the applicants who are admitted to, and take,~~
36 ~~the licensure examinations required by Section 4200. The board~~
37 ~~shall report to the Legislature and the Office of the Consumer~~
38 ~~Advocate before September 1, 2008, regarding the impact on those~~
39 ~~applicants of the examination limitations imposed by this section.~~

1 The report shall include, but not be limited to, the following
2 information:

3 (1) The number of applicants taking the examination and the
4 number who fail the examination for the fourth time.

5 (2) The number of applicants who, after failing the examination
6 for the fourth time, complete a pharmacy studies program in
7 California or another state to satisfy the requirements of this section
8 and who apply to take the licensure examination required by
9 Section 4200.

10 (3) To the extent possible, the school from which the applicant
11 graduated and the school's location and the pass/fail rates on the
12 examination for each school.

13 (g) This section shall remain in effect only until January 1, 2010,
14 and as of that date is repealed, unless a later enacted statute, that
15 is enacted before January 1, 2010, deletes or extends that date.

16 SEC. 47. Section 4200.3 of the Business and Professions Code
17 is amended to read:

18 4200.3. (a) The examination process shall be regularly
19 reviewed pursuant to Section 139.

20 (b) The examination process shall meet the standards and
21 guidelines set forth in the Standards for Educational and
22 Psychological Testing and the Federal Uniform Guidelines for
23 Employee Selection Procedures. The board shall work with the
24 Office of Examination Resources of the department or with an
25 equivalent organization who shall certify at minimum once every
26 five years that the examination process meets these national testing
27 standards. If the department determines that the examination
28 process fails to meet these standards, the board shall terminate its
29 use of the North American Pharmacy Licensure Examination and
30 shall use only the written and practical examination developed by
31 the board.

32 (c) The examination shall meet the mandates of subdivision (a)
33 of Section 12944 of the Government Code.

34 (d) The board shall work with the Office of Examination
35 Resources or with an equivalent organization to develop the state
36 jurisprudence examination to ensure that applicants for licensure
37 are evaluated on their knowledge of applicable state laws and
38 regulations.

39 (e) The board shall annually publish the pass and fail rates for
40 the pharmacist's licensure examination administered pursuant to

1 ~~Section 4200, including a comparison of historical pass and fail~~
2 ~~rates before utilization of the North American Pharmacist Licensure~~
3 ~~Examination.~~

4 ~~(f) The board shall annually report to the Legislature, the Office~~
5 ~~of the Consumer Advocate, and the department, the pass rates of~~
6 ~~applicants who sat for the national examination compared with~~
7 ~~the pass rates of applicants who sat for the prior state examination.~~
8 ~~This report shall be a component of the evaluation of the~~
9 ~~examination process that is based on psychometrically sound~~
10 ~~principles for establishing minimum qualifications and levels of~~
11 ~~competency.~~

12 ~~SEC. 48. Section 4501 of the Business and Professions Code~~
13 ~~is amended to read:~~

14 ~~4501. "Board," as used in this chapter, means the Board of~~
15 ~~Vocational Nursing and Psychiatric Technicians.~~

16 ~~SEC. 49. Section 4800 of the Business and Professions Code~~
17 ~~is amended to read:~~

18 ~~4800. There is in the Department of Consumer Affairs a~~
19 ~~Veterinary Medical Board in which the administration of this~~
20 ~~chapter is vested. The board consists of seven members, three of~~
21 ~~whom shall be public members.~~

22 ~~SEC. 50. Section 4928 of the Business and Professions Code~~
23 ~~is amended to read:~~

24 ~~4928. The Acupuncture Board, which consists of seven~~
25 ~~members, shall enforce and administer this chapter. The appointing~~
26 ~~powers, as described in Section 4929, may appoint to the board a~~
27 ~~person who was a member of the prior board prior to the repeal of~~
28 ~~that board on January 1, 2006.~~

29 ~~SEC. 51. Section 4989 of the Business and Professions Code~~
30 ~~is repealed.~~

31 ~~SEC. 52. Section 4990 of the Business and Professions Code~~
32 ~~is amended to read:~~

33 ~~4990. (a) There is in the Department of Consumer Affairs, a~~
34 ~~Board of Behavioral Sciences that consists of 11 members~~
35 ~~composed as follows:~~

- 36 ~~(1) Two state licensed clinical social workers.~~
- 37 ~~(2) One state licensed educational psychologist.~~
- 38 ~~(3) Two state licensed marriage and family therapists.~~
- 39 ~~(4) Six public members.~~

1 ~~(b) Each member, except the six public members, shall have at~~
2 ~~least two years of experience in his or her profession.~~

3 ~~(c) Each member shall reside in the State of California.~~

4 ~~(d) The Governor shall appoint four of the public members and~~
5 ~~the five licensed members with the advice and consent of the~~
6 ~~Senate. The Senate Committee on Rules and the Speaker of the~~
7 ~~Assembly shall each appoint a public member.~~

8 ~~(e) Each member of the board shall be appointed for a term of~~
9 ~~four years. A member appointed by the Speaker of the Assembly~~
10 ~~or the Senate Committee on Rules shall hold office until the~~
11 ~~appointment and qualification of his or her successor or until one~~
12 ~~year from the expiration date of the term for which he or she was~~
13 ~~appointed, whichever first occurs. Pursuant to Section 1774 of the~~
14 ~~Government Code, a member appointed by the Governor shall~~
15 ~~hold office until the appointment and qualification of his or her~~
16 ~~successor or until 60 days from the expiration date of the term for~~
17 ~~which he or she was appointed, whichever first occurs.~~

18 ~~(f) A vacancy on the board shall be filled by appointment for~~
19 ~~the unexpired term by the authority who appointed the member~~
20 ~~whose membership was vacated.~~

21 ~~(g) Not later than the first of June of each calendar year, the~~
22 ~~board shall elect a chairperson and a vice chairperson from its~~
23 ~~membership.~~

24 ~~(h) Each member of the board shall receive a per diem and~~
25 ~~reimbursement of expenses as provided in Section 103.~~

26 ~~SEC. 53. Section 4990.24 of the Business and Professions~~
27 ~~Code is repealed.~~

28 ~~SEC. 54. Section 5000 of the Business and Professions Code~~
29 ~~is amended to read:~~

30 ~~5000. There is in the Department of Consumer Affairs the~~
31 ~~California Board of Accountancy, which consists of 15 members,~~
32 ~~seven of whom shall be licensees, and eight of whom shall be~~
33 ~~public members who shall not be licentiates of the board or~~
34 ~~registered by the board. The board has the powers and duties~~
35 ~~conferred by this chapter.~~

36 ~~The Governor shall appoint four of the public members, and the~~
37 ~~seven licensee members as provided in this section. The Senate~~
38 ~~Committee on Rules and the Speaker of the Assembly shall each~~
39 ~~appoint two public members. In appointing the seven licensee~~
40 ~~members, the Governor shall appoint members representing a cross~~

1 ~~section of the accounting profession with at least two members~~
2 ~~representing a small public accounting firm. For the purposes of~~
3 ~~this chapter, a small public accounting firm shall be defined as a~~
4 ~~professional firm that employs a total of no more than four~~
5 ~~licensees as partners, owners, or full-time employees in the practice~~
6 ~~of public accountancy within the State of California.~~

7 ~~SEC. 55. Section 5510 of the Business and Professions Code~~
8 ~~is amended to read:~~

9 ~~5510. There is in the Department of Consumer Affairs a~~
10 ~~California Architects Board which consists of 10 members.~~

11 ~~Any reference in law to the California Board of Architectural~~
12 ~~Examiners shall mean the California Architects Board.~~

13 ~~SEC. 56. Section 5621 of the Business and Professions Code~~
14 ~~is amended to read:~~

15 ~~5621. (a) There is hereby created within the jurisdiction of the~~
16 ~~board, a Landscape Architects Technical Committee, hereinafter~~
17 ~~referred to in this chapter as the landscape architects committee.~~

18 ~~(b) The landscape architects committee shall consist of five~~
19 ~~members who shall be licensed to practice landscape architecture~~
20 ~~in this state. The Governor shall appoint three of the members.~~
21 ~~The Senate Committee on Rules and the Speaker of the Assembly~~
22 ~~shall appoint one member each.~~

23 ~~(c) The initial members to be appointed by the Governor are as~~
24 ~~follows: one member for a term of one year; one member for a~~
25 ~~term of two years; and one member for a term of three years. The~~
26 ~~Senate Committee on Rules and the Speaker of the Assembly shall~~
27 ~~initially each appoint one member for a term of four years.~~
28 ~~Thereafter, appointments shall be made for four-year terms,~~
29 ~~expiring on June 1 of the fourth year and until the appointment~~
30 ~~and qualification of his or her successor or until one year shall~~
31 ~~have elapsed whichever first occurs. Vacancies shall be filled for~~
32 ~~the unexpired term.~~

33 ~~(d) No person shall serve as a member of the landscape~~
34 ~~architects committee for more than two consecutive terms.~~

35 ~~SEC. 57. Section 5810 of the Business and Professions Code~~
36 ~~is amended to read:~~

37 ~~5810. This chapter shall be subject to the process described in~~
38 ~~Division 1.3 (commencing with Section 474.20).~~

39 ~~SEC. 58. Section 5811 of the Business and Professions Code~~
40 ~~is amended to read:~~

1 ~~5811. An interior design organization issuing stamps under~~
2 ~~Section 5801 shall provide to the Legislature and the Office of the~~
3 ~~Consumer Advocate by September 1, 2008, a report that reviews~~
4 ~~and assesses the costs and benefits associated with the California~~
5 ~~Code and Regulations Examination and explores feasible~~
6 ~~alternatives to that examination.~~

7 ~~SEC. 59. Section 6510 of the Business and Professions Code~~
8 ~~is amended to read:~~

9 ~~6510. (a) There is within the jurisdiction of the department~~
10 ~~the Professional Fiduciaries Bureau. The bureau is under the~~
11 ~~supervision and control of the director. The duty of enforcing and~~
12 ~~administering this chapter is vested in the chief of the bureau, who~~
13 ~~is responsible to the director. Every power granted or duty imposed~~
14 ~~upon the director under this chapter may be exercised or performed~~
15 ~~in the name of the director by a deputy director or by the chief,~~
16 ~~subject to conditions and limitations as the director may prescribe.~~

17 ~~(b) The Governor shall appoint, subject to confirmation by the~~
18 ~~Senate, the chief of the bureau, at a salary to be fixed and~~
19 ~~determined by the director with the approval of the Director of~~
20 ~~Finance. The chief shall serve under the direction and supervision~~
21 ~~of the director and at the pleasure of the Governor.~~

22 ~~SEC. 60. Section 6511 of the Business and Professions Code~~
23 ~~is amended to read:~~

24 ~~6511. (a) There is within the bureau a Professional Fiduciaries~~
25 ~~Advisory Committee. The committee shall consist of seven~~
26 ~~members; three of whom shall be licensees actively engaged as~~
27 ~~professional fiduciaries in this state, and four of whom shall be~~
28 ~~public members. One of the public members shall be a member~~
29 ~~of a nonprofit organization advocating on behalf of the elderly,~~
30 ~~and one of the public members shall be a probate court investigator.~~

31 ~~(b) Each member of the committee shall be appointed for a term~~
32 ~~of four years, and shall hold office until the appointment of his or~~
33 ~~her successor or until one year shall have elapsed since the~~
34 ~~expiration of the term for which he or she was appointed,~~
35 ~~whichever first occurs.~~

36 ~~(c) Vacancies shall be filled by the appointing power for the~~
37 ~~unexpired portion of the terms in which they occur. No person~~
38 ~~shall serve as a member of the committee for more than two~~
39 ~~consecutive terms.~~

1 ~~(d) The Governor shall appoint the member from a nonprofit~~
2 ~~organization advocating on behalf of the elderly, the probate court~~
3 ~~investigator, and the three licensees. The Senate Committee on~~
4 ~~Rules and the Speaker of the Assembly shall each appoint a public~~
5 ~~member.~~

6 ~~(e) Every member of the committee shall receive per diem and~~
7 ~~expenses as provided in Sections 103 and 113.~~

8 ~~(f) The committee shall do all of the following:~~

9 ~~(1) Examine the functions and policies of the bureau and make~~
10 ~~recommendations with respect to policies, practices, and~~
11 ~~regulations as may be deemed important and necessary by the~~
12 ~~director or the chief to promote the interests of consumers or that~~
13 ~~otherwise promote the welfare of the public.~~

14 ~~(2) Consider and make appropriate recommendations to the~~
15 ~~bureau in any matter relating to professional fiduciaries in this~~
16 ~~state.~~

17 ~~(3) Provide assistance as may be requested by the bureau in the~~
18 ~~exercise of its powers or duties.~~

19 ~~(4) Meet at least once each quarter. All meetings of the~~
20 ~~committee shall be public meetings.~~

21 ~~(g) The bureau shall meet and consult with the committee~~
22 ~~regarding general policy issues related to professional fiduciaries.~~

23 ~~SEC. 61. Section 6710 of the Business and Professions Code~~
24 ~~is amended to read:~~

25 ~~6710. (a) There is in the Department of Consumer Affairs a~~
26 ~~Board for Professional Engineers and Land Surveyors, which~~
27 ~~consists of 13 members.~~

28 ~~(b) Any reference in any law or regulation to the Board of~~
29 ~~Registration for Professional Engineers and Land Surveyors is~~
30 ~~deemed to refer to the Board for Professional Engineers and Land~~
31 ~~Surveyors.~~

32 ~~SEC. 62. Section 7000.5 of the Business and Professions Code~~
33 ~~is amended to read:~~

34 ~~7000.5. There is in the Department of Consumer Affairs a~~
35 ~~Contractors' State License Board, which consists of 15 members.~~

36 ~~SEC. 63. Section 7200 of the Business and Professions Code~~
37 ~~is amended to read:~~

38 ~~7200. There is in the Department of Consumer Affairs a State~~
39 ~~Board of Guide Dogs for the Blind in whom enforcement of this~~
40 ~~chapter is vested. The board shall consist of seven members~~

1 appointed by the Governor. One member shall be the Director of
2 Rehabilitation or his or her designated representative. The
3 remaining members shall be persons who have shown a particular
4 interest in dealing with the problems of the blind, and at least two
5 of them shall be blind persons who use guide dogs.

6 SEC. 64. ~~Section 7303 of the Business and Professions Code~~
7 ~~is amended to read:~~

8 7303. (a) ~~Notwithstanding Article 8 (commencing with Section~~
9 ~~9148) of Chapter 1.5 of Part 1 of Division 2 of Title 2 of the~~
10 ~~Government Code, there is in the Department of Consumer Affairs~~
11 ~~the State Board of Barbering and Cosmetology in which the~~
12 ~~administration of this chapter is vested.~~

13 (b) ~~The board shall consist of nine members. Five members~~
14 ~~shall be public members and four members shall represent the~~
15 ~~professions. The Governor shall appoint three of the public~~
16 ~~members and the four professions members. The Senate Committee~~
17 ~~on Rules and the Speaker of the Assembly shall each appoint one~~
18 ~~public member. Members of the board shall be appointed for a~~
19 ~~term of four years, except that of the members appointed by the~~
20 ~~Governor, two of the public members and two of the professions~~
21 ~~members shall be appointed for an initial term of two years. No~~
22 ~~board member may serve longer than two consecutive terms.~~

23 (c) ~~The board shall appoint an executive officer who is exempt~~
24 ~~from civil service. The executive officer shall exercise the powers~~
25 ~~and perform the duties delegated by the board and vested in him~~
26 ~~or her by this chapter. The appointment of the executive officer is~~
27 ~~subject to the approval of the director. In the event that a newly~~
28 ~~authorized board replaces an existing or previous bureau, the~~
29 ~~director may appoint an interim executive officer for the board~~
30 ~~who shall serve temporarily until the new board appoints a~~
31 ~~permanent executive officer.~~

32 (d) ~~The executive officer shall provide examiners, inspectors,~~
33 ~~and other personnel necessary to carry out the provisions of this~~
34 ~~chapter.~~

35 SEC. 65. ~~Section 7304 of the Business and Professions Code~~
36 ~~is repealed.~~

37 SEC. 66. ~~Section 7810 of the Business and Professions Code~~
38 ~~is amended to read:~~

39 7810. ~~The Board for Geologists and Geophysicists is within~~
40 ~~the department and is subject to the jurisdiction of the department.~~

1 Except as provided in this section, the board shall consist of eight
2 members, five of whom shall be public members, two of whom
3 shall be geologists, and one of whom shall be a geophysicist.

4 Each member shall hold office until the appointment and
5 qualification of the member's successor or until one year has
6 elapsed from the expiration of the term for which the member was
7 appointed, whichever occurs first. Vacancies occurring prior to
8 the expiration of the term shall be filled by appointment for the
9 remainder of the unexpired term.

10 Each appointment shall be for a four-year term expiring June 1
11 of the fourth year following the year in which the previous term
12 expired. No person shall serve as a member of the board for more
13 than two consecutive terms.

14 The Governor shall appoint three of the public members and the
15 three members qualified as provided in Section 7811. The Senate
16 Committee on Rules and the Speaker of the Assembly shall each
17 appoint a public member, and their initial appointment shall be
18 made to fill, respectively, the first and second public member
19 vacancies that occurred on or after January 1, 1983.

20 At the time the first vacancy is created by the expiration of the
21 term of a public member appointed by the Governor, the board
22 shall be reduced to consist of seven members, four of whom shall
23 be public members, two of whom shall be geologists, and one of
24 whom shall be a geophysicist. Notwithstanding any other provision
25 of law, the term of that member shall not be extended for any
26 reason, except as provided in this section.

27 SEC. 67. Section 8000 of the Business and Professions Code
28 is amended to read:

29 8000. There is in the Department of Consumer Affairs a Court
30 Reporters Board of California, which consists of five members,
31 three of whom shall be public members and two of whom shall be
32 holders of certificates issued under this chapter who have been
33 actively engaged as shorthand reporters within this state for at least
34 five years immediately preceding their appointment.

35 SEC. 68. Section 8520 of the Business and Professions Code
36 is amended to read:

37 8520. (a) There is in the Department of Consumer Affairs a
38 Structural Pest Control Board, which consists of seven members.

39 (b) Subject to the jurisdiction conferred upon the director by
40 Division 1 (commencing with Section 100) of this code, the board

1 is vested with the power to and shall administer the provisions of
2 this chapter.

3 (c) It is the intent of the Legislature that consumer protection
4 is the primary mission of the board.

5 SEC. 69. Section 8710 of the Business and Professions Code
6 is amended to read:

7 8710. (a) The Board for Professional Engineers and Land
8 Surveyors is vested with power to administer the provisions and
9 requirements of this chapter, and may make and enforce rules and
10 regulations that are reasonably necessary to carry out its provisions.

11 (b) The board may adopt rules and regulations of professional
12 conduct that are not inconsistent with state and federal law. The
13 rules and regulations may include definitions of incompetence and
14 negligence. Every person who holds a license or certificate issued
15 by the board pursuant to this chapter, or a license or certificate
16 issued to a civil engineer pursuant to Chapter 7 (commencing with
17 Section 6700), shall be governed by these rules and regulations.

18 SEC. 70. Section 9882 of the Business and Professions Code
19 is amended to read:

20 9882. There is in the Department of Consumer Affairs a Bureau
21 of Automotive Repair under the supervision and control of the
22 director. The duty of enforcing and administering this chapter is
23 vested in the chief who is responsible to the director. The director
24 may adopt and enforce those rules and regulations that he or she
25 determines are reasonably necessary to carry out the purposes of
26 this chapter and declaring the policy of the bureau, including a
27 system for the issuance of citations for violations of this chapter
28 as specified in Section 125.9. These rules and regulations shall be
29 adopted pursuant to Chapter 3.5 (commencing with Section 11340)
30 of Part 1 of Division 3 of Title 2 of the Government Code.

31 SEC. 71. Section 18602 of the Business and Professions Code
32 is amended to read:

33 18602. (a) Except as provided in this section, there is in the
34 Department of Consumer Affairs the State Athletic Commission,
35 which consists of seven members. Five members shall be appointed
36 by the Governor, one member shall be appointed by the Senate
37 Committee on Rules, and one member shall be appointed by the
38 Speaker of the Assembly.

1 The members of the commission appointed by the Governor are
2 subject to confirmation by the Senate pursuant to Section 1322 of
3 the Government Code.

4 No person who is currently licensed, or who was licensed within
5 the last two years, under this chapter may be appointed or
6 reappointed to, or serve on, the commission.

7 (b) In appointing commissioners under this section, the
8 Governor, the Senate Committee on Rules, and the Speaker of the
9 Assembly shall make every effort to ensure that at least four of
10 the members of the commission shall have experience and
11 demonstrate expertise in one of the following areas:

12 (1) A licensed physician or surgeon having expertise or
13 specializing in neurology, neurosurgery, head trauma, or sports
14 medicine. Sports medicine includes, but is not limited to,
15 physiology, kinesiology, or other aspects of sports medicine.

16 (2) Financial management.

17 (3) Public safety.

18 (4) Past experience in the activity regulated by this chapter,
19 either as a contestant, a referee or official, a promoter, or a venue
20 operator.

21 (c) Each member of the commission shall be appointed for a
22 term of four years. All terms shall end on January 1. Vacancies
23 occurring prior to the expiration of the term shall be filled by
24 appointment for the unexpired term. No commission member may
25 serve more than two consecutive terms.

26 (d) Notwithstanding any other provision of this chapter,
27 members first appointed shall be subject to the following terms:

28 (1) The Governor shall appoint two members for two years, two
29 members for three years, and one member for four years.

30 (2) The Senate Committee on Rules shall appoint one member
31 for four years.

32 (3) The Speaker of the Assembly shall appoint one member for
33 four years.

34 (4) The appointing powers, as described in subdivision (a), may
35 appoint to the commission a person who was a member of the prior
36 commission prior to the repeal of that commission on July 1, 2006.

37 SEC. 72. Section 18602.5 of the Business and Professions
38 Code is amended to read:

39 18602.5. (a) The commission shall adopt and submit a strategic
40 plan to the Governor and the Legislature on or before September

30, 2008. The commission shall also submit a report to the Governor and the Legislature on the status of the adoption of the strategic plan on or before March 1, 2008. The strategic plan shall include, but shall not be limited to, efforts to resolve prior State Athletic Commission deficiencies in the following areas:

(1) Regulation of the profession, what fees should be paid for this regulation, and the structure and equity of the fees charged.

(2) The effect and appropriateness of contracts made pursuant to Section 18828.

(3) Costs to train ringside physicians, referees, timekeepers, and judges.

(4) Steps that need to be taken to ensure sufficient sources of revenue and funding.

(5) Necessity for review and modification of organizational procedures, the licensing process, and the complaint process.

(6) Outdated information technology.

(7) Unorganized and improper accounting.

(8) Miscalculations at events, a lack of technology to record proper calculations, and funding issues.

(9) The health and safety of the participants and the public in attendance at events regulated under this chapter, including costs of examinations under Section 18711.

(b) The commission shall solicit input from the public, the State Auditor, the Little Hoover Commission, the Center for Public Interest Law, and others as necessary in preparing and adopting the strategic plan.

(c) The commission shall report on progress in implementing the strategic plan to the Director of Consumer Affairs, the Governor, and the Legislature on or before September 30, 2009.

SEC. 73. Section 18824 of the Business and Professions Code is amended to read:

18824. (a) Except as provided in Sections 18646 and 18832, every person who conducts a contest or wrestling exhibition shall, within five working days after the determination of every contest or wrestling exhibition for which admission is charged and received, furnish to the commission the following:

(1) A written report executed under penalty of perjury by one of the officers, showing the amount of the gross receipts, not to exceed two million dollars (\$2,000,000), and the gross price for the contest or wrestling exhibition charged directly or indirectly

1 and no matter by whom received, for the sale, lease, or other
2 exploitation of broadcasting and television rights of the contest or
3 wrestling exhibition, and without any deductions, except for
4 expenses incurred for one broadcast announcer, telephone line
5 connection, and transmission mobile equipment facility, which
6 may be deducted from the gross taxable base when those expenses
7 are approved by the commission.

8 (2) A fee of 5 percent, exclusive of any federal taxes paid
9 thereon, of the amount paid for admission to the contest or
10 wrestling exhibition, except that for any one contest, the fee shall
11 not exceed the amount of one hundred thousand dollars (\$100,000).
12 The commission shall report to the Legislature and the Office of
13 the Consumer Advocate on the fiscal impact of the one hundred
14 thousand dollar (\$100,000) limit on fees collected by the
15 commission for admissions revenues.

16 (A) The amount of the gross receipts upon which the fee
17 provided for in paragraph (2) is calculated shall not include any
18 assessments levied by the commission under Section 18711.

19 (B) (i) If the fee for any one boxing contest exceeds seventy
20 thousand dollars (\$70,000), the amount in excess of seventy
21 thousand dollars (\$70,000) shall be paid one-half to the commission
22 and one-half to the Boxers' Pension Fund.

23 (ii) If the report required by subdivision (b) of Section 18618
24 recommends that the Boxers' Pension Fund shall be expanded to
25 include all athletes licensed under this chapter, the commission,
26 by regulation, shall require, for all contests where the fee exceeds
27 seventy thousand dollars (\$70,000), the amount in excess of
28 seventy thousand dollars (\$70,000) shall be paid one-half to the
29 commission and one-half to the Boxers' Pension Fund only if all
30 athletes licensed under this chapter are made eligible for the
31 Boxers' Pension Fund.

32 (C) The fee shall apply to the amount actually paid for admission
33 and not to the regular established price.

34 (D) No fee is due in the case of a person admitted free of charge.
35 However, if the total number of persons admitted free of charge
36 to a boxing, kickboxing, or martial arts contest, or wrestling
37 exhibition exceeds 33 percent of the total number of spectators,
38 then a fee of one dollar (\$1) per complimentary ticket or pass used
39 to gain admission to the contest shall be paid to the commission

1 for each complimentary ticket or pass that exceeds the numerical
2 total of 33 percent of the total number of spectators.

3 (E) The minimum fee for an amateur contest or exhibition shall
4 not be less than five hundred dollars (\$500).

5 (3) A fee of up to 5 percent, to be established by the commission
6 through regulations to become operative on or before July 1, 2008;
7 and updated periodically as needed, of the gross price, exclusive
8 of any federal taxes paid thereon, for the sale, lease, or other
9 exploitation of broadcasting or television rights thereof, except
10 that in no case shall the fee be less than one thousand dollars
11 (\$1,000) or more than twenty-five thousand dollars (\$25,000).

12 (b) As used in this section, "person" includes a promoter, club,
13 individual, corporation, partnership, association, or other
14 organization, and "wrestling exhibition" means a performance of
15 wrestling skills and techniques by two or more individuals, to
16 which admission is charged or which is broadcast or televised, in
17 which the participating individuals are not required to use their
18 best efforts in order to win, and for which the winner may have
19 been selected before the performance commences.

20 SEC. 74. Section 18882 of the Business and Professions Code
21 is amended to read:

22 18882. (a) At the time of payment of the fee required by
23 Section 18824, a promoter shall pay to the commission all amounts
24 scheduled for contribution to the pension plan. If the commission,
25 in its discretion, requires pursuant to Section 18881, that
26 contributions to the pension plan be made by the boxer and his or
27 her manager, those contributions shall be made at the time and in
28 the manner prescribed by the commission.

29 (b) All contributions to finance the pension plan shall be
30 deposited in the State Treasury and credited to the Boxers' Pension
31 Fund, which is hereby created. Notwithstanding the provisions of
32 Section 13340 of the Government Code, all moneys in the Boxers'
33 Pension Fund are hereby continuously appropriated to be used
34 exclusively for the purposes and administration of the pension
35 plan.

36 (c) The Boxers' Pension Fund is a retirement fund, and no
37 moneys within it shall be deposited or transferred to the General
38 Fund.

39 (d) The commission has exclusive control of all funds in the
40 Boxers' Pension Fund. No transfer or disbursement in any amount

1 from this fund shall be made except upon the authorization of the
2 commission and for the purpose and administration of the pension
3 plan.

4 ~~(c) Except as otherwise provided in this subdivision, the~~
5 ~~commission or its designee shall invest the money contained in~~
6 ~~the Boxers' Pension Fund according to the same standard of care~~
7 ~~as provided in Section 16040 of the Probate Code. The commission~~
8 ~~has exclusive control over the investment of all moneys in the~~
9 ~~Boxers' Pension Fund. Except as otherwise prohibited or restricted~~
10 ~~by law, the commission may invest the moneys in the fund through~~
11 ~~the purchase, holding, or sale of any investment, financial~~
12 ~~instrument, or financial transaction that the commission in its~~
13 ~~informed opinion determines is prudent.~~

14 ~~(f) The administrative costs associated with investing, managing,~~
15 ~~and distributing the Boxers' Pension Fund shall be limited to no~~
16 ~~more than 20 percent of the average annual contribution made to~~
17 ~~the fund in the previous two years, not including any investment~~
18 ~~income derived from the corpus of the fund. Diligence shall be~~
19 ~~exercised by administrators in order to lower the fund's expense~~
20 ~~ratio as far below 20 percent as feasible and appropriate. The~~
21 ~~commission shall report to the Legislature and the Office of the~~
22 ~~Consumer Advocate on the impact of this provision on or before~~
23 ~~March 1, 2008.~~

24 ~~SEC. 75. Section 22259 of the Business and Professions Code~~
25 ~~is repealed.~~

26 ~~SEC. 76. Section 9148.8 of the Government Code is amended~~
27 ~~to read:~~

28 ~~9148.8. (a) The Office of the Consumer Advocate, acting~~
29 ~~pursuant to a request from the chairperson of the appropriate policy~~
30 ~~committee, shall evaluate a plan prepared pursuant to Section~~
31 ~~9148.4 or 9148.6.~~

32 ~~(b) Evaluations prepared by the Office of the Consumer~~
33 ~~Advocate pursuant to this section shall be provided to the respective~~
34 ~~policy and fiscal committees of the Legislature pursuant to rules~~
35 ~~adopted by each committee for this purpose.~~

36 ~~SEC. 77. Section 9148.51 of the Government Code is amended~~
37 ~~to read:~~

38 ~~9148.51. (a) It is the intent of the Legislature that all existing~~
39 ~~and proposed state boards be subject to review upon request by a~~
40 ~~Member of the Legislature or the chief of the Office of the~~

1 ~~Consumer Advocate, as provided in Division 1.3 (commencing~~
2 ~~with Section 474.20) of the Business and Professions Code, to~~
3 ~~evaluate and determine whether the highest priority of each board~~
4 ~~is the protection of the public.~~

5 ~~(b) If any state board is determined to be defieient pursuant to~~
6 ~~Section 474.21 of the Business and Professions Code, the~~
7 ~~incumbent members of the board shall be removed from office~~
8 ~~without a hearing as described in Section 474.21 of the Business~~
9 ~~and Professions Code, and a successor board shall be appointed~~
10 ~~pursuant to Section 101.1 of the Business and Professions Code.~~

11 ~~SEC. 78. Section 9148.52 of the Government Code is repealed.~~

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1294
Author: Ducheny
Bill Date: July 1, 2008, amended
Subject: Employed Physicians: pilot project
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill makes minor changes to the Board's current pilot program, which allows for the direct employment of physicians and surgeons by qualified district hospitals.

ANALYSIS:

Current law (commonly referred to the "Corporate Practice of Medicine" - B&P Code section 2400) generally prohibits corporations or other entities that are not controlled by physicians from practicing medicine, to ensure that lay persons are not controlling or influencing the professional judgment and practice of medicine by physicians.

Pursuant to Senate Bill 376, Chesbro (Chapter 411, Statutes of 2003), the Board established a pilot project to provide for the direct employment of physicians by qualified district hospitals. The pilot project is set to expire on January 1, 2011.

SB 376 was sponsored by the Association of California Healthcare Districts to enable qualified district hospitals to recruit, hire and employ physicians as full-time paid staff in a rural or underserved community meeting the criteria contained in this bill. Support for this bill was premised upon the belief that the employment of physicians could improve the ability of district hospitals to attract the physicians required to meet the needs of those communities and also help to ensure the continued survival of healthcare district hospitals in rural and underserved communities, without any cost to the state.

Although it was anticipated that this pilot program would bring about significant improvement in access to healthcare in these areas, only five hospitals throughout all of California have participated, employing a total of six physicians.

Under current law, this program is designated as a pilot program set to expire in 2011. However, while this bill would allow the pilot program to continue until 2016, an evaluation has not been concluded yet. In March, 2008, staff sent letters to the six physicians and five hospital administrators participating in the program, asking each to define the successes, problems, if any, and overall effectiveness of this program for the hospital and on consumer protection. Additional input was sought as to how the program could be strengthened, and the participating physicians were asked to share thoughts on how the program impacted them personally. Responses were requested by April 15, 2008, and the report is being prepared; current law requires the report to be submitted to the Legislature no later than October 1, 2008 and this bill would require a subsequent report to the Legislature in 2013.

Under current law, the program provides for the direct employment of a total of 20 physicians in California by qualified district hospitals and limits the total number of physicians employed by a qualified district hospital to no more than two at a time. This bill as originally introduced would allow an unlimited number of physicians to be directly employed throughout California and would increase the maximum employed by each hospital to five physicians. Further, although under current law and under this bill the participating hospital is prohibited from interfering with, controlling, or otherwise directing the physician's professional judgment, it is still of concern that there would be an unlimited number of physicians in California who could be employed.

Under current law, the pilot program applies to "qualified district hospitals," which are defined as hospitals that meet all of the following requirements:

1. Is a district hospital organized and governed pursuant to the Local Health Care District Law?
2. Does it provide a percentage of care to Medicare, Medi-Cal, and uninsured patients that exceeds 50 percent of patient days?
3. Is it located in a county with a total population of less than 750,000? (According to the 2000 Census, the following counties have a population over 750,000; therefore, hospitals in these counties are not eligible to participate in the pilot program: Alameda, Contra Costa, Fresno, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, Santa Clara, and Ventura counties.)
4. Does it have net losses from operations in fiscal year 2000-01, as reported to the Office of Statewide Health Planning and Development?

The bill as introduced made significant changes to the Board's pilot program. However, following discussion in the Senate Health Committee, the author recognized that changes to the program might be premature, considering the Board has not conducted an analysis of the program's outcomes.

Thus, the bill was amended to closely reflect existing law. The only remaining changes in the bill are:

1. Instead of requiring the hospital to be located in a county with a total population of less than 750,000, participating hospitals must be located within a medically underserved population, medically underserved area, or health professions shortage area.
2. Allow the hospitals to employ more than two physicians if deemed appropriate by the Board.
3. The participating hospital must have net losses from operations *in the previous fiscal year*.
4. The board must submit a supplemental report to the Legislature in 2014.
5. The pilot program is extended until 2017.

This bill was amended May 23, 2008, to extend the pilot project until 2017.

FISCAL:

Minor and absorbable to: monitor, develop process to approve/deny more than two physicians per hospital, and to write report.

POSITION:

Neutral

July 17, 2008

AMENDED IN ASSEMBLY JULY 1, 2008

AMENDED IN SENATE MAY 23, 2008

AMENDED IN SENATE APRIL 23, 2008

SENATE BILL

No. 1294

Introduced by Senator Ducheny

February 19, 2008

An act to amend Section 2401.1 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1294, as amended, Ducheny. Healing arts.

Existing law, the Medical Practice Act, restricts the employment of licensed physicians and surgeons and podiatrists by a corporation or other artificial legal entity, subject to specified exemptions. Existing law establishes, until January 1, 2011, a pilot project to allow qualified district hospitals to employ a physician and surgeon, if the hospital does not interfere with, control, or otherwise direct the professional judgment of the physician and surgeon. The pilot project authorizes the direct employment of a total of 20 physicians and surgeons by those hospitals, and specifies that each qualified district hospital may employ up to 2 physicians and surgeons, subject to certain requirements. Existing law defines a qualified district hospital for purposes of the pilot project as a hospital that, among other things, is located in a county with a population of less than 750,000 and had net losses in fiscal year 2001–02. Existing law requires the Medical Board of California to report to the Legislature not later than October 8, 2008, on the effectiveness of the pilot project.

This bill would revise the pilot project to allow the employment of more than 20 physicians and surgeons, subject to statewide demand and at the discretion of the board, and to allow the total number of licensees employed by a qualified district hospital to exceed 2, if deemed appropriate by the board on a case-by-case basis. The bill would revise the definition of a qualified district hospital; to a hospital that, among other things, is located in a medically underserved area or a rural hospital and had net losses in the most recent fiscal year. The bill would extend the pilot project until January 1, ~~2016~~ 2017, would require the board to provide a supplemental report to the Legislature not later than October 1, ~~2013~~ 2014, on the evaluation of the effectiveness of the pilot project, and would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2401.1 of the Business and Professions
2 Code is amended to read:
3 2401.1. (a) The Legislature finds and declares as follows:
4 (1) Due to the large number of uninsured and underinsured
5 Californians, a number of California communities are having great
6 difficulty recruiting and retaining physicians and surgeons.
7 (2) In order to recruit physicians and surgeons to provide
8 medically necessary services in rural and medically underserved
9 communities, many district hospitals have no viable alternative
10 but to directly employ physicians and surgeons in order to provide
11 economic security adequate for a physician and surgeon to relocate
12 and reside in their communities.
13 (3) The Legislature intends that a district hospital meeting the
14 conditions set forth in this section be able to employ physicians
15 and surgeons directly, and to charge for their professional services.
16 (4) *The purpose of the pilot project established by this section*
17 *is to improve recruitment and retention of physicians and surgeons*
18 *in rural or other medically underserved areas throughout*
19 *California.*
20 ~~(4)~~
21 (5) The Legislature reaffirms that Section 2400 provides an
22 increasingly important protection for patients and physicians and
23 surgeons from inappropriate intrusions into the practice of

1 medicine, and further intends that a district hospital not interfere
2 with, control, or otherwise direct a physician and surgeon's
3 professional judgment.

4 (b) A pilot project to provide for the direct employment of a
5 total of 20 physicians and surgeons by qualified district hospitals
6 is hereby established in order to improve the recruitment and
7 retention of physicians and surgeons in rural and other medically
8 underserved areas.

9 (c) For purposes of this section, a qualified district hospital
10 means a hospital that meets all of the following requirements:

11 (1) Is a district hospital organized and governed pursuant to the
12 Local Health Care District Law (Division 23 (commencing with
13 Section 32000) of the Health and Safety Code).

14 (2) Provides a percentage of care to Medicare, Medi-Cal, and
15 uninsured patients that exceeds 50 percent of patient days,
16 excluding patient days devoted to contracts with the Department
17 of Corrections and Rehabilitation.

18 (3) Is located within a medically underserved population,
19 medically underserved area, or health professions shortage area,
20 so designated by the federal government pursuant to Section 254b,
21 254c-14, or 254e of Title 42 of the United States Code, or is a rural
22 hospital as defined in Section 124840 of the Health and Safety
23 Code.

24 (4) Has net losses from operations in the most recent fiscal year
25 prior to executing an employment contract, as reported to the Office
26 of Statewide Health Planning and Development.

27 (d) In addition to the requirements of subdivision (c), and in
28 addition to other applicable laws, a qualified district hospital may
29 directly employ a licensee pursuant to subdivision (b) if all of the
30 following conditions are satisfied:

31 (1) The total number of physicians and surgeons employed by
32 all qualified district hospitals under this section does not exceed
33 20. If statewide demand exceeds the statewide cap, additional
34 physicians and surgeons may be employed under this section at
35 the discretion of the board.

36 (2) The medical staff and the elected trustees of the qualified
37 district hospital concur by an affirmative vote of each body that
38 the physician and surgeon's employment is in the best interest of
39 the communities served by the hospital.

1 (3) The licensee enters into or renews a written employment
2 contract with the qualified district hospital prior to December 31,
3 ~~2011~~ 2012, for a term not in excess of four years. The contract
4 shall provide for mandatory dispute resolution under the auspices
5 of the board for disputes directly relating to the licensee's clinical
6 practice.

7 (4) The total number of licensees employed by the qualified
8 district hospital does not exceed two at any time, unless the
9 employment of additional physicians and surgeons is deemed
10 appropriate by the board on a case-by-case basis.

11 (5) The qualified district hospital notifies the board in writing
12 that the hospital plans to enter into a written contract with the
13 licensee, and the board has confirmed that the licensee's
14 employment is within the maximum number permitted by this
15 section. The board shall provide written confirmation to the hospital
16 within five working days of receipt of the written notification to
17 the board.

18 (e) The board shall report to the Legislature not later than
19 October 1, 2008, and shall provide a supplemental report not later
20 than October 1, ~~2013~~ 2014, on the evaluation of the effectiveness
21 of the pilot project in improving access to health care in rural and
22 medically underserved areas and the project's impact on consumer
23 protection as it relates to intrusions into the practice of medicine.

24 (f) Nothing in this section shall exempt the district hospital from
25 any reporting requirements or affect the board's authority to take
26 action against a physician and surgeon's license.

27 (g) This section shall remain in effect only until January 1, ~~2016~~
28 2017, and as of that date is repealed, unless a later enacted statute
29 that is enacted before January 1, ~~2016~~ 2017, deletes or extends
30 that date.

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1379
Author: Ducheny
Bill Date: February 21, 2008, introduced
Subject: Loan Repayment: permanent funding source
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Assembly Appropriations Committee on suspense.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would prohibit the Department of Managed Health Care (DMHC) from using fines and penalty revenues to reduce assessments levied on health care service plans and redirects these penalty revenues to the Physician Corps Loan Repayment Program.

ANALYSIS:

The Department of Managed Health Care (DMHC) regulates the operations of health plans to assure access to medical care and to protect the interests of consumers and providers. The department has an annual budget of approximately \$44 million with three hundred employees supported entirely by an assessment on licensed health plans. The department is authorized to levy fines and administrative penalties against plans for violations of the Knox-Keene Act, and under current practice, the department now deposits any resulting fine revenue into its operating budget. The fiscal effect of depositing these revenues is to reduce the assessments of health plans. Penalty revenues vary from year to year. In 2005, penalties totaled \$1.5 million, in 2006 fines generated \$ 3.3 million, and in 2007 the department collected \$ 4.8 million. At present, roughly \$2.5 million in fines have been challenged by the plans and are outstanding.

This bill would redirect the fine revenue from the DMHC's budget to the Steven M. Thompson Physician Loan Repayment Program. The program has been funded from a variety of sources, currently has less than \$1 million in funding and has eligible requests for more than \$15 million.

FISCAL: None to MBC

POSITION: Support

July 15, 2008

Introduced by Senator Ducheny

February 21, 2008

An act to amend Sections 1367.01, 1367.03, 1368, 1368.04, 1374.9, 1374.34, 1393.6, and 128555 of, and to add Section 1341.45 to, the Health and Safety Code, relating to health care service plans.

LEGISLATIVE COUNSEL'S DIGEST

SB 1379, as introduced, Ducheny. Fines and penalties: physician loan repayment.

Existing law establishes the Medically Underserved Account for Physicians within the Health Professions Education Fund that is managed by the Health Professions Education Foundation and the Office of Statewide Health Planning and Development. Under existing law, the primary purpose of the account is to fund the Steven M. Thompson Physician Corps Loan Repayment Program, which provides for the repayment of educational loans, as specified, obtained by a physician and surgeon who practices in a medically underserved area of the state, as defined. Under existing law, funds placed in the account for those purposes are continuously appropriated.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. Existing law subjects health care service plans to various fines and administrative penalties for failing to comply with specified provisions of the act and requires that certain administrative penalties be deposited in the Managed Care Fund. Existing law also requires health care service plans to pay specified assessments each fiscal year as a reimbursement of their share of the costs and expenses reasonably incurred in the administration of the act. Existing law requires the adjustment of those assessments and

other charges set forth in the act if the director of the department determines that they are in excess of the amount necessary, or are insufficient, to meet the expenses of the act.

This bill would prohibit using the fines and administrative penalties authorized by the act to reduce those assessments. The bill would also require that the fines and administrative penalties authorized pursuant to the act be paid to the Medically Underserved Account for Physicians to be used, upon appropriation by the Legislature, for the purposes of the Physician Corps Loan Repayment Program. The bill would specify that those funds are not continuously appropriated.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1341.45 is added to the Health and Safety
2 Code, to read:

3 1341.45. The fines and administrative penalties authorized
4 pursuant to this chapter shall be paid to the Medically Underserved
5 Account for Physicians within the Health Professions Education
6 Fund and shall, upon appropriation by the Legislature, be used for
7 the purposes of the Steven M. Thompson Physician Corps Loan
8 Repayment Program, as specified in Article 5 (commencing with
9 Section 128550) of Chapter 5 of Part 3 of Division 107 and,
10 notwithstanding Section 128555, shall not be used to provide
11 funding for the Physician Volunteer Program. Notwithstanding
12 Section 1356.1, these fines and penalties shall not be used to reduce
13 the assessments imposed on health care service plans pursuant to
14 Section 1356.

15 SEC. 2. Section 1367.01 of the Health and Safety Code is
16 amended to read:

17 1367.01. (a) A health care service plan and any entity with
18 which it contracts for services that include utilization review or
19 utilization management functions, that prospectively,
20 retrospectively, or concurrently reviews and approves, modifies,
21 delays, or denies, based in whole or in part on medical necessity,
22 requests by providers prior to, retrospectively, or concurrent with
23 the provision of health care services to enrollees, or that delegates
24 these functions to medical groups or independent practice

1 associations or to other contracting providers, shall comply with
2 this section.

3 (b) A health care service plan that is subject to this section shall
4 have written policies and procedures establishing the process by
5 which the plan prospectively, retrospectively, or concurrently
6 reviews and approves, modifies, delays, or denies, based in whole
7 or in part on medical necessity, requests by providers of health
8 care services for plan enrollees. These policies and procedures
9 shall ensure that decisions based on the medical necessity of
10 proposed health care services are consistent with criteria or
11 guidelines that are supported by clinical principles and processes.
12 These criteria and guidelines shall be developed pursuant to Section
13 1363.5. These policies and procedures, and a description of the
14 process by which the plan reviews and approves, modifies, delays,
15 or denies requests by providers prior to, retrospectively, or
16 concurrent with the provision of health care services to enrollees,
17 shall be filed with the director for review and approval, and shall
18 be disclosed by the plan to providers and enrollees upon request,
19 and by the plan to the public upon request.

20 (c) A health care service plan subject to this section, except a
21 plan that meets the requirements of Section 1351.2, shall employ
22 or designate a medical director who holds an unrestricted license
23 to practice medicine in this state issued pursuant to Section 2050
24 of the Business and Professions Code or pursuant to the
25 Osteopathic Act, or, if the plan is a specialized health care service
26 plan, a clinical director with California licensure in a clinical area
27 appropriate to the type of care provided by the specialized health
28 care service plan. The medical director or clinical director shall
29 ensure that the process by which the plan reviews and approves,
30 modifies, or denies, based in whole or in part on medical necessity,
31 requests by providers prior to, retrospectively, or concurrent with
32 the provision of health care services to enrollees, complies with
33 the requirements of this section.

34 (d) If health plan personnel, or individuals under contract to the
35 plan to review requests by providers, approve the provider's
36 request, pursuant to subdivision (b), the decision shall be
37 communicated to the provider pursuant to subdivision (h).

38 (e) No individual, other than a licensed physician or a licensed
39 health care professional who is competent to evaluate the specific
40 clinical issues involved in the health care services requested by

1 the provider, may deny or modify requests for authorization of
2 health care services for an enrollee for reasons of medical necessity.
3 The decision of the physician or other health care professional
4 shall be communicated to the provider and the enrollee pursuant
5 to subdivision (h).

6 (f) The criteria or guidelines used by the health care service
7 plan to determine whether to approve, modify, or deny requests
8 by providers prior to, retrospectively, or concurrent with, the
9 provision of health care services to enrollees shall be consistent
10 with clinical principles and processes. These criteria and guidelines
11 shall be developed pursuant to the requirements of Section 1363.5.

12 (g) If the health care service plan requests medical information
13 from providers in order to determine whether to approve, modify,
14 or deny requests for authorization, the plan shall request only the
15 information reasonably necessary to make the determination.

16 (h) In determining whether to approve, modify, or deny requests
17 by providers prior to, retrospectively, or concurrent with the
18 provision of health care services to enrollees, based in whole or
19 in part on medical necessity, a health care service plan subject to
20 this section shall meet the following requirements:

21 (1) Decisions to approve, modify, or deny, based on medical
22 necessity, requests by providers prior to, or concurrent with the
23 provision of health care services to enrollees that do not meet the
24 requirements for the 72-hour review required by paragraph (2),
25 shall be made in a timely fashion appropriate for the nature of the
26 enrollee's condition, not to exceed five business days from the
27 plan's receipt of the information reasonably necessary and
28 requested by the plan to make the determination. In cases where
29 the review is retrospective, the decision shall be communicated to
30 the individual who received services, or to the individual's
31 designee, within 30 days of the receipt of information that is
32 reasonably necessary to make this determination, and shall be
33 communicated to the provider in a manner that is consistent with
34 current law. For purposes of this section, retrospective reviews
35 shall be for care rendered on or after January 1, 2000.

36 (2) When the enrollee's condition is such that the enrollee faces
37 an imminent and serious threat to his or her health, including, but
38 not limited to, the potential loss of life, limb, or other major bodily
39 function, or the normal timeframe for the decisionmaking process,
40 as described in paragraph (1), would be detrimental to the enrollee's

1 life or health or could jeopardize the enrollee's ability to regain
2 maximum function, decisions to approve, modify, or deny requests
3 by providers prior to, or concurrent with, the provision of health
4 care services to enrollees, shall be made in a timely fashion
5 appropriate for the nature of the enrollee's condition, not to exceed
6 72 hours after the plan's receipt of the information reasonably
7 necessary and requested by the plan to make the determination.
8 Nothing in this section shall be construed to alter the requirements
9 of subdivision (b) of Section 1371.4. Notwithstanding Section
10 1371.4, the requirements of this division shall be applicable to all
11 health plans and other entities conducting utilization review or
12 utilization management.

13 (3) Decisions to approve, modify, or deny requests by providers
14 for authorization prior to, or concurrent with, the provision of
15 health care services to enrollees shall be communicated to the
16 requesting provider within 24 hours of the decision. Except for
17 concurrent review decisions pertaining to care that is underway,
18 which shall be communicated to the enrollee's treating provider
19 within 24 hours, decisions resulting in denial, delay, or
20 modification of all or part of the requested health care service shall
21 be communicated to the enrollee in writing within two business
22 days of the decision. In the case of concurrent review, care shall
23 not be discontinued until the enrollee's treating provider has been
24 notified of the plan's decision and a care plan has been agreed
25 upon by the treating provider that is appropriate for the medical
26 needs of that patient.

27 (4) Communications regarding decisions to approve requests
28 by providers prior to, retrospectively, or concurrent with the
29 provision of health care services to enrollees shall specify the
30 specific health care service approved. Responses regarding
31 decisions to deny, delay, or modify health care services requested
32 by providers prior to, retrospectively, or concurrent with the
33 provision of health care services to enrollees shall be
34 communicated to the enrollee in writing, and to providers initially
35 by telephone or facsimile, except with regard to decisions rendered
36 retrospectively, and then in writing, and shall include a clear and
37 concise explanation of the reasons for the plan's decision, a
38 description of the criteria or guidelines used, and the clinical
39 reasons for the decisions regarding medical necessity. Any written
40 communication to a physician or other health care provider of a

1 denial, delay, or modification of a request shall include the name
2 and telephone number of the health care professional responsible
3 for the denial, delay, or modification. The telephone number
4 provided shall be a direct number or an extension, to allow the
5 physician or health care provider easily to contact the professional
6 responsible for the denial, delay, or modification. Responses shall
7 also include information as to how the enrollee may file a grievance
8 with the plan pursuant to Section 1368, and in the case of Medi-Cal
9 enrollees, shall explain how to request an administrative hearing
10 and aid paid pending under Sections 51014.1 and 51014.2 of Title
11 22 of the California Code of Regulations.

12 (5) If the health care service plan cannot make a decision to
13 approve, modify, or deny the request for authorization within the
14 timeframes specified in paragraph (1) or (2) because the plan is
15 not in receipt of all of the information reasonably necessary and
16 requested, or because the plan requires consultation by an expert
17 reviewer, or because the plan has asked that an additional
18 examination or test be performed upon the enrollee, provided the
19 examination or test is reasonable and consistent with good medical
20 practice, the plan shall, immediately upon the expiration of the
21 timeframe specified in paragraph (1) or (2) or as soon as the plan
22 becomes aware that it will not meet the timeframe, whichever
23 occurs first, notify the provider and the enrollee, in writing, that
24 the plan cannot make a decision to approve, modify, or deny the
25 request for authorization within the required timeframe, and specify
26 the information requested but not received, or the expert reviewer
27 to be consulted, or the additional examinations or tests required.
28 The plan shall also notify the provider and enrollee of the
29 anticipated date on which a decision may be rendered. Upon receipt
30 of all information reasonably necessary and requested by the plan,
31 the plan shall approve, modify, or deny the request for authorization
32 within the timeframes specified in paragraph (1) or (2), whichever
33 applies.

34 (6) If the director determines that a health care service plan has
35 failed to meet any of the timeframes in this section, or has failed
36 to meet any other requirement of this section, the director may
37 assess, by order, administrative penalties for each failure. A
38 proceeding for the issuance of an order assessing administrative
39 penalties shall be subject to appropriate notice to, and an
40 opportunity for a hearing with regard to, the person affected, in

1 accordance with subdivision (a) of Section 1397. The
2 administrative penalties shall not be deemed an exclusive remedy
3 for the director. ~~These penalties shall be paid to the State Managed~~
4 ~~Care Fund.~~

5 (i) A health care service plan subject to this section shall
6 maintain telephone access for providers to request authorization
7 for health care services.

8 (j) A health care service plan subject to this section that reviews
9 requests by providers prior to, retrospectively, or concurrent with,
10 the provision of health care services to enrollees shall establish,
11 as part of the quality assurance program required by Section 1370,
12 a process by which the plan's compliance with this section is
13 assessed and evaluated. The process shall include provisions for
14 evaluation of complaints, assessment of trends, implementation
15 of actions to correct identified problems, mechanisms to
16 communicate actions and results to the appropriate health plan
17 employees and contracting providers, and provisions for evaluation
18 of any corrective action plan and measurements of performance.

19 (k) The director shall review a health care service plan's
20 compliance with this section as part of its periodic onsite medical
21 survey of each plan undertaken pursuant to Section 1380, and shall
22 include a discussion of compliance with this section as part of its
23 report issued pursuant to that section.

24 (l) This section shall not apply to decisions made for the care
25 or treatment of the sick who depend upon prayer or spiritual means
26 for healing in the practice of religion as set forth in subdivision
27 (a) of Section 1270.

28 (m) Nothing in this section shall cause a health care service plan
29 to be defined as a health care provider for purposes of any provision
30 of law, including, but not limited to, Section 6146 of the Business
31 and Professions Code, Sections 3333.1 and 3333.2 of the Civil
32 Code, and Sections 340.5, 364, 425.13, 667.7, and 1295 of the
33 Code of Civil Procedure.

34 SEC. 3. Section 1367.03 of the Health and Safety Code is
35 amended to read:

36 1367.03. (a) Not later than January 1, 2004, the department
37 shall develop and adopt regulations to ensure that enrollees have
38 access to needed health care services in a timely manner. In
39 developing these regulations, the department shall develop

1 indicators of timeliness of access to care and, in so doing, shall
2 consider the following as indicators of timeliness of access to care:

3 (1) Waiting times for appointments with physicians, including
4 primary care and specialty physicians.

5 (2) Timeliness of care in an episode of illness, including the
6 timeliness of referrals and obtaining other services, if needed.

7 (3) Waiting time to speak to a physician, registered nurse, or
8 other qualified health professional acting within his or her scope
9 of practice who is trained to screen or triage an enrollee who may
10 need care.

11 (b) In developing these standards for timeliness of access, the
12 department shall consider the following:

13 (1) Clinical appropriateness.

14 (2) The nature of the specialty.

15 (3) The urgency of care.

16 (4) The requirements of other provisions of law, including
17 Section 1367.01 governing utilization review, that may affect
18 timeliness of access.

19 (c) The department may adopt standards other than the time
20 elapsed between the time an enrollee seeks health care and obtains
21 care. If the department chooses a standard other than the time
22 elapsed between the time an enrollee first seeks health care and
23 obtains it, the department shall demonstrate why that standard is
24 more appropriate. In developing these standards, the department
25 shall consider the nature of the plan network.

26 (d) The department shall review and adopt standards, as needed,
27 concerning the availability of primary care physicians, specialty
28 physicians, hospital care, and other health care, so that consumers
29 have timely access to care. In so doing, the department shall
30 consider the nature of physician practices, including individual
31 and group practices as well as the nature of the plan network. The
32 department shall also consider various circumstances affecting the
33 delivery of care, including urgent care, care provided on the same
34 day, and requests for specific providers. If the department finds
35 that health care service plans and health care providers have
36 difficulty meeting these standards, the department may make
37 recommendations to the Assembly Committee on Health and the
38 Senate Committee on Insurance of the Legislature pursuant to
39 subdivision (i).

1 (e) In developing standards under subdivision (a), the department
2 shall consider requirements under federal law, requirements under
3 other state programs, standards adopted by other states, nationally
4 recognized accrediting organizations, and professional associations.
5 The department shall further consider the needs of rural areas,
6 specifically those in which health facilities are more than 30 miles
7 apart and any requirements imposed by the State Department of
8 Health *Care* Services on health care service plans that contract
9 with the State Department of Health *Care* Services to provide
10 Medi-Cal managed care.

11 (f) (1) Contracts between health care service plans and health
12 care providers shall assure compliance with the standards
13 developed under this section. These contracts shall require
14 reporting by health care providers to health care service plans and
15 by health care service plans to the department to ensure compliance
16 with the standards.

17 (2) Health care service plans shall report annually to the
18 department on compliance with the standards in a manner specified
19 by the department. The reported information shall allow consumers
20 to compare the performance of plans and their contracting providers
21 in complying with the standards, as well as changes in the
22 compliance of plans with these standards.

23 (g) (1) When evaluating compliance with the standards, the
24 department shall focus more upon patterns of noncompliance rather
25 than isolated episodes of noncompliance.

26 (2) The director may investigate and take enforcement action
27 against plans regarding noncompliance with the requirements of
28 this section. Where substantial harm to an enrollee has occurred
29 as a result of plan noncompliance, the director may, by order,
30 assess administrative penalties subject to appropriate notice of,
31 and the opportunity for, a hearing in accordance with Section 1397.
32 The plan may provide to the director, and the director may
33 consider, information regarding the plan's overall compliance with
34 the requirements of this section. The administrative penalties shall
35 not be deemed an exclusive remedy available to the director. ~~These~~
36 ~~penalties shall be paid to the State Managed Care Fund.~~ The
37 director shall periodically evaluate grievances to determine if any
38 audit, investigative, or enforcement actions should be undertaken
39 by the department.

1 (3) The director may, after appropriate notice and opportunity
2 for hearing in accordance with Section 1397, by order, assess
3 administrative penalties if the director determines that a health
4 care service plan has knowingly committed, or has performed with
5 a frequency that indicates a general business practice, either of the
6 following:

7 (A) Repeated failure to act promptly and reasonably to assure
8 timely access to care consistent with this chapter.

9 (B) Repeated failure to act promptly and reasonably to require
10 contracting providers to assure timely access that the plan is
11 required to perform under this chapter and that have been delegated
12 by the plan to the contracting provider when the obligation of the
13 plan to the enrollee or subscriber is reasonably clear.

14 (C) The administrative penalties available to the director
15 pursuant to this section are not exclusive, and may be sought and
16 employed in any combination with civil, criminal, and other
17 administrative remedies deemed warranted by the director to
18 enforce this chapter.

19 ~~(4) The administrative penalties authorized pursuant to this~~
20 ~~section shall be paid to the State Managed Care Fund.~~

21 (h) The department shall work with the patient advocate to
22 assure that the quality of care report card incorporates information
23 provided pursuant to subdivision (f) regarding the degree to which
24 health care service plans and health care providers comply with
25 the requirements for timely access to care.

26 (i) The department shall report to the Assembly Committee on
27 Health and the Senate Committee on Insurance of the Legislature
28 on March 1, 2003, and on March 1, 2004, regarding the progress
29 toward the implementation of this section.

30 (j) Every three years, the department shall review information
31 regarding compliance with the standards developed under this
32 section and shall make recommendations for changes that further
33 protect enrollees.

34 SEC. 4. Section 1368 of the Health and Safety Code is amended
35 to read:

36 1368. (a) Every plan shall do all of the following:

37 (1) Establish and maintain a grievance system approved by the
38 department under which enrollees may submit their grievances to
39 the plan. Each system shall provide reasonable procedures in
40 accordance with department regulations that shall ensure adequate

1 consideration of enrollee grievances and rectification when
2 appropriate.

3 (2) Inform its subscribers and enrollees upon enrollment in the
4 plan and annually thereafter of the procedure for processing and
5 resolving grievances. The information shall include the location
6 and telephone number where grievances may be submitted.

7 (3) Provide forms for grievances to be given to subscribers and
8 enrollees who wish to register written grievances. The forms used
9 by plans licensed pursuant to Section 1353 shall be approved by
10 the director in advance as to format.

11 (4) (A) Provide for a written acknowledgment within five
12 calendar days of the receipt of a grievance, except as noted in
13 subparagraph (B). The acknowledgment shall advise the
14 complainant of the following:

15 (i) That the grievance has been received.

16 (ii) The date of receipt.

17 (iii) The name of the plan representative and the telephone
18 number and address of the plan representative who may be
19 contacted about the grievance.

20 (B) Grievances received by telephone, by facsimile, by e-mail,
21 or online through the plan's Web site pursuant to Section 1368.015,
22 that are not coverage disputes, disputed health care services
23 involving medical necessity, or experimental or investigational
24 treatment and that are resolved by the next business day following
25 receipt are exempt from the requirements of subparagraph (A) and
26 paragraph (5). The plan shall maintain a log of all these grievances.
27 The log shall be periodically reviewed by the plan and shall include
28 the following information for each complaint:

29 (i) The date of the call.

30 (ii) The name of the complainant.

31 (iii) The complainant's member identification number.

32 (iv) The nature of the grievance.

33 (v) The nature of the resolution.

34 (vi) The name of the plan representative who took the call and
35 resolved the grievance.

36 (5) Provide subscribers and enrollees with written responses to
37 grievances, with a clear and concise explanation of the reasons for
38 the plan's response. For grievances involving the delay, denial, or
39 modification of health care services, the plan response shall
40 describe the criteria used and the clinical reasons for its decision,

1 including all criteria and clinical reasons related to medical
2 necessity. If a plan, or one of its contracting providers, issues a
3 decision delaying, denying, or modifying health care services based
4 in whole or in part on a finding that the proposed health care
5 services are not a covered benefit under the contract that applies
6 to the enrollee, the decision shall clearly specify the provisions in
7 the contract that exclude that coverage.

8 (6) Keep in its files all copies of grievances, and the responses
9 thereto, for a period of five years.

10 (b) (1) (A) After either completing the grievance process
11 described in subdivision (a), or participating in the process for at
12 least 30 days, a subscriber or enrollee may submit the grievance
13 to the department for review. In any case determined by the
14 department to be a case involving an imminent and serious threat
15 to the health of the patient, including, but not limited to, severe
16 pain, the potential loss of life, limb, or major bodily function, or
17 in any other case where the department determines that an earlier
18 review is warranted, a subscriber or enrollee shall not be required
19 to complete the grievance process or to participate in the process
20 for at least 30 days before submitting a grievance to the department
21 for review.

22 (B) A grievance may be submitted to the department for review
23 and resolution prior to any arbitration.

24 (C) Notwithstanding subparagraphs (A) and (B), the department
25 may refer any grievance that does not pertain to compliance with
26 this chapter to the State Department of Health Services, the
27 California Department of Aging, the federal Health Care Financing
28 Administration, or any other appropriate governmental entity for
29 investigation and resolution.

30 (2) If the subscriber or enrollee is a minor, or is incompetent or
31 incapacitated, the parent, guardian, conservator, relative, or other
32 designee of the subscriber or enrollee, as appropriate, may submit
33 the grievance to the department as the agent of the subscriber or
34 enrollee. Further, a provider may join with, or otherwise assist, a
35 subscriber or enrollee, or the agent, to submit the grievance to the
36 department. In addition, following submission of the grievance to
37 the department, the subscriber or enrollee, or the agent, may
38 authorize the provider to assist, including advocating on behalf of
39 the subscriber or enrollee. For purposes of this section, a "relative"
40 includes the parent, stepparent, spouse, adult son or daughter,

1 grandparent, brother, sister, uncle, or aunt of the subscriber or
2 enrollee.

3 (3) The department shall review the written documents submitted
4 with the subscriber's or the enrollee's request for review, or
5 submitted by the agent on behalf of the subscriber or enrollee. The
6 department may ask for additional information, and may hold an
7 informal meeting with the involved parties, including providers
8 who have joined in submitting the grievance or who are otherwise
9 assisting or advocating on behalf of the subscriber or enrollee. If
10 after reviewing the record, the department concludes that the
11 grievance, in whole or in part, is eligible for review under the
12 independent medical review system established pursuant to Article
13 5.55 (commencing with Section 1374.30), the department shall
14 immediately notify the subscriber or enrollee, or agent, of that
15 option and shall, if requested orally or in writing, assist the
16 subscriber or enrollee in participating in the independent medical
17 review system.

18 (4) If after reviewing the record of a grievance, the department
19 concludes that a health care service eligible for coverage and
20 payment under a health care service plan contract has been delayed,
21 denied, or modified by a plan, or by one of its contracting
22 providers, in whole or in part due to a determination that the service
23 is not medically necessary, and that determination was not
24 communicated to the enrollee in writing along with a notice of the
25 enrollee's potential right to participate in the independent medical
26 review system, as required by this chapter, the director shall, by
27 order, assess administrative penalties. A proceeding for the issuance
28 of an order assessing administrative penalties shall be subject to
29 appropriate notice of, and the opportunity for, a hearing with regard
30 to the person affected in accordance with Section 1397. The
31 administrative penalties shall not be deemed an exclusive remedy
32 available to the director. ~~These penalties shall be paid to the State~~
33 ~~Managed Care Fund.~~

34 (5) The department shall send a written notice of the final
35 disposition of the grievance, and the reasons therefor, to the
36 subscriber or enrollee, the agent, to any provider that has joined
37 with or is otherwise assisting the subscriber or enrollee, and to the
38 plan, within 30 calendar days of receipt of the request for review
39 unless the director, in his or her discretion, determines that
40 additional time is reasonably necessary to fully and fairly evaluate

1 the relevant grievance. In any case not eligible for the independent
2 medical review system established pursuant to Article 5.55
3 (commencing with Section 1374.30), the department's written
4 notice shall include, at a minimum, the following:

5 (A) A summary of its findings and the reasons why the
6 department found the plan to be, or not to be, in compliance with
7 any applicable laws, regulations, or orders of the director.

8 (B) A discussion of the department's contact with any medical
9 provider, or any other independent expert relied on by the
10 department, along with a summary of the views and qualifications
11 of that provider or expert.

12 (C) If the enrollee's grievance is sustained in whole or part,
13 information about any corrective action taken.

14 (6) In any department review of a grievance involving a disputed
15 health care service, as defined in subdivision (b) of Section
16 1374.30, that is not eligible for the independent medical review
17 system established pursuant to Article 5.55 (commencing with
18 Section 1374.30), in which the department finds that the plan has
19 delayed, denied, or modified health care services that are medically
20 necessary, based on the specific medical circumstances of the
21 enrollee, and those services are a covered benefit under the terms
22 and conditions of the health care service plan contract, the
23 department's written notice shall do either of the following:

24 (A) Order the plan to promptly offer and provide those health
25 care services to the enrollee.

26 (B) Order the plan to promptly reimburse the enrollee for any
27 reasonable costs associated with urgent care or emergency services,
28 or other extraordinary and compelling health care services, when
29 the department finds that the enrollee's decision to secure those
30 services outside of the plan network was reasonable under the
31 circumstances.

32 The department's order shall be binding on the plan.

33 (7) Distribution of the written notice shall not be deemed a
34 waiver of any exemption or privilege under existing law, including,
35 but not limited to, Section 6254.5 of the Government Code, for
36 any information in connection with and including the written
37 notice, nor shall any person employed or in any way retained by
38 the department be required to testify as to that information or
39 notice.

1 (8) The director shall establish and maintain a system of aging
2 of grievances that are pending and unresolved for 30 days or more
3 that shall include a brief explanation of the reasons each grievance
4 is pending and unresolved for 30 days or more.

5 (9) A subscriber or enrollee, or the agent acting on behalf of a
6 subscriber or enrollee, may also request voluntary mediation with
7 the plan prior to exercising the right to submit a grievance to the
8 department. The use of mediation services shall not preclude the
9 right to submit a grievance to the department upon completion of
10 mediation. In order to initiate mediation, the subscriber or enrollee,
11 or the agent acting on behalf of the subscriber or enrollee, and the
12 plan shall voluntarily agree to mediation. Expenses for mediation
13 shall be borne equally by both sides. The department shall have
14 no administrative or enforcement responsibilities in connection
15 with the voluntary mediation process authorized by this paragraph.

16 (c) The plan's grievance system shall include a system of aging
17 of grievances that are pending and unresolved for 30 days or more.
18 The plan shall provide a quarterly report to the director of
19 grievances pending and unresolved for 30 or more days with
20 separate categories of grievances for Medicare enrollees and
21 Medi-Cal enrollees. The plan shall include with the report a brief
22 explanation of the reasons each grievance is pending and
23 unresolved for 30 days or more. The plan may include the
24 following statement in the quarterly report that is made available
25 to the public by the director:

26 "Under Medicare and Medi-Cal law, Medicare enrollees and
27 Medi-Cal enrollees each have separate avenues of appeal that
28 are not available to other enrollees. Therefore, grievances
29 pending and unresolved may reflect enrollees pursuing their
30 Medicare or Medi-Cal appeal rights."

31 If requested by a plan, the director shall include this statement in
32 a written report made available to the public and prepared by the
33 director that describes or compares grievances that are pending
34 and unresolved with the plan for 30 days or more. Additionally,
35 the director shall, if requested by a plan, append to that written
36 report a brief explanation, provided in writing by the plan, of the
37 reasons why grievances described in that written report are pending
38 and unresolved for 30 days or more. The director shall not be
39 required to include a statement or append a brief explanation to a

1 written report that the director is required to prepare under this
2 chapter, including Sections 1380 and 1397.5.

3 (d) Subject to subparagraph (C) of paragraph (1) of subdivision
4 (b), the grievance or resolution procedures authorized by this
5 section shall be in addition to any other procedures that may be
6 available to any person, and failure to pursue, exhaust, or engage
7 in the procedures described in this section shall not preclude the
8 use of any other remedy provided by law.

9 (e) Nothing in this section shall be construed to allow the
10 submission to the department of any provider grievance under this
11 section. However, as part of a provider's duty to advocate for
12 medically appropriate health care for his or her patients pursuant
13 to Sections 510 and 2056 of the Business and Professions Code,
14 nothing in this subdivision shall be construed to prohibit a provider
15 from contacting and informing the department about any concerns
16 he or she has regarding compliance with or enforcement of this
17 chapter.

18 SEC. 5. Section 1368.04 of the Health and Safety Code is
19 amended to read:

20 1368.04. (a) The director shall investigate and take
21 enforcement action against plans regarding grievances reviewed
22 and found by the department to involve noncompliance with the
23 requirements of this chapter, including grievances that have been
24 reviewed pursuant to the independent medical review system
25 established pursuant to Article 5.55 (commencing with Section
26 1374.30). Where substantial harm to an enrollee has occurred as
27 a result of plan noncompliance, the director shall, by order, assess
28 administrative penalties subject to appropriate notice of, and the
29 opportunity for, a hearing with regard to the person affected in
30 accordance with Section 1397. The administrative penalties shall
31 not be deemed an exclusive remedy available to the director. ~~These~~
32 ~~penalties shall be paid to the State Managed Care Fund.~~ The
33 director shall periodically evaluate grievances to determine if any
34 audit, investigative, or enforcement actions should be undertaken
35 by the department.

36 (b) The director may, after appropriate notice and opportunity
37 for hearing in accordance with Section 1397, by order, assess
38 administrative penalties if the director determines that a health
39 care service plan has knowingly committed, or has performed with

1 a frequency that indicates a general business practice, either of the
2 following:

3 (1) Repeated failure to act promptly and reasonably to
4 investigate and resolve grievances in accordance with Section
5 1368.01.

6 (2) Repeated failure to act promptly and reasonably to resolve
7 grievances when the obligation of the plan to the enrollee or
8 subscriber is reasonably clear.

9 (c) The administrative penalties available to the director pursuant
10 to this section are not exclusive, and may be sought and employed
11 in any combination with civil, criminal, and other administrative
12 remedies deemed warranted by the director to enforce this chapter.

13 ~~(d) The administrative penalties authorized pursuant to this~~
14 ~~section shall be paid to the State Managed Care Fund.~~

15 SEC. 6. Section 1374.9 of the Health and Safety Code is
16 amended to read:

17 1374.9. For violations of Section 1374.7, the director may,
18 after appropriate notice and opportunity for hearing, by order, levy
19 administrative penalties as follows:

20 (a) Any health care service plan that violates Section 1374.7,
21 or that violates any rule or order adopted or issued pursuant to this
22 section, is liable for administrative penalties of not less than two
23 thousand five hundred dollars (\$2,500) for each first violation, and
24 of not less than five thousand dollars (\$5,000) nor more than ten
25 thousand dollars (\$10,000) for each second violation, and of not
26 less than fifteen thousand dollars (\$15,000) and not more than one
27 hundred thousand dollars (\$100,000) for each subsequent violation.

28 ~~(b) The administrative penalties shall be paid to the Managed~~
29 ~~Health Care Fund.~~

30 ~~(c)~~

31 (b) The administrative penalties available to the director pursuant
32 to this section are not exclusive, and may be sought and employed
33 in any combination with civil, criminal, and other administrative
34 remedies deemed advisable by the director to enforce the provisions
35 of this chapter.

36 SEC. 7. Section 1374.34 of the Health and Safety Code is
37 amended to read:

38 1374.34. (a) Upon receiving the decision adopted by the
39 director pursuant to Section 1374.33 that a disputed health care
40 service is medically necessary, the plan shall promptly implement

1 the decision. In the case of reimbursement for services already
2 rendered, the plan shall reimburse the provider or enrollee,
3 whichever applies, within five working days. In the case of services
4 not yet rendered, the plan shall authorize the services within five
5 working days of receipt of the written decision from the director,
6 or sooner if appropriate for the nature of the enrollee's medical
7 condition, and shall inform the enrollee and provider of the
8 authorization in accordance with the requirements of paragraph
9 (3) of subdivision (h) of Section 1367.01.

10 (b) A plan shall not engage in any conduct that has the effect
11 of prolonging the independent review process. The engaging in
12 that conduct or the failure of the plan to promptly implement the
13 decision is a violation of this chapter and, in addition to any other
14 fines, penalties, and other remedies available to the director under
15 this chapter, the plan shall be subject to an administrative penalty
16 of not less than five thousand dollars (\$5,000) for each day that
17 the decision is not implemented. ~~Administrative penalties shall be~~
18 ~~deposited in the State Managed Care Fund.~~

19 (c) The director shall require the plan to promptly reimburse
20 the enrollee for any reasonable costs associated with those services
21 when the director finds that the disputed health care services were
22 a covered benefit under the terms and conditions of the health care
23 service plan contract, and the services are found by the independent
24 medical review organization to have been medically necessary
25 pursuant to Section 1374.33, and either the enrollee's decision to
26 secure the services outside of the plan provider network was
27 reasonable under the emergency or urgent medical circumstances,
28 or the health care service plan contract does not require or provide
29 prior authorization before the health care services are provided to
30 the enrollee.

31 (d) In addition to requiring plan compliance regarding
32 subdivisions (a), (b), and (c) the director shall review individual
33 cases submitted for independent medical review to determine
34 whether any enforcement actions, including penalties, may be
35 appropriate. In particular, where substantial harm, as defined in
36 Section 3428 of the Civil Code, to an enrollee has already occurred
37 because of the decision of a plan, or one of its contracting
38 providers, to delay, deny, or modify covered health care services
39 that an independent medical review determines to be medically

1 necessary pursuant to Section 1374.33, the director shall impose
2 penalties.

3 (e) Pursuant to Section 1368.04, the director shall perform an
4 annual audit of independent medical review cases for the dual
5 purposes of education and the opportunity to determine if any
6 investigative or enforcement actions should be undertaken by the
7 department, particularly if a plan repeatedly fails to act promptly
8 and reasonably to resolve grievances associated with a delay,
9 denial, or modification of medically necessary health care services
10 when the obligation of the plan to provide those health care services
11 to enrollees or subscribers is reasonably clear.

12 SEC. 8. Section 1393.6 of the Health and Safety Code is
13 amended to read:

14 1393.6. For violations of Article 3.1 (commencing with Section
15 1357) and Article 3.15 (commencing with Section 1357.50), the
16 director may, after appropriate notice and opportunity for hearing,
17 by order levy administrative penalties as follows:

18 (a) Any person, solicitor, or solicitor firm, other than a health
19 care service plan, who willfully violates any provision of this
20 chapter, or who willfully violates any rule or order adopted or
21 issued pursuant to this chapter, is liable for administrative penalties
22 of not less than two hundred fifty dollars (\$250) for each first
23 violation, and of not less than one thousand dollars (\$1,000) and
24 not more than two thousand five hundred dollars (\$2,500) for each
25 subsequent violation.

26 (b) Any health care service plan that willfully violates any
27 provision of this chapter, or that willfully violates any rule or order
28 adopted or issued pursuant to this chapter, is liable for
29 administrative penalties of not less than two thousand five hundred
30 dollars (\$2,500) for each first violation, and of not less than five
31 thousand dollars (\$5,000) nor more than ten thousand dollars
32 (\$10,000) for each second violation, and of not less than fifteen
33 thousand dollars (\$15,000) and not more than one hundred
34 thousand dollars (\$100,000) for each subsequent violation.

35 ~~(c) The administrative penalties shall be paid to the Managed~~
36 ~~Health Care Fund.~~

37 ~~(d)~~

38 (c) The administrative penalties available to the director pursuant
39 to this section are not exclusive, and may be sought and employed
40 in any combination with civil, criminal, and other administrative

1 remedies deemed advisable by the director to enforce the provisions
2 of this chapter.

3 SEC. 9. Section 128555 of the Health and Safety Code is
4 amended to read:

5 128555. (a) The Medically Underserved Account for
6 Physicians is hereby established within the Health Professions
7 Education Fund. The primary purpose of this account is to provide
8 funding for the ongoing operations of the Steven M. Thompson
9 Physician Corps Loan Repayment Program provided for under
10 this article. This account also may be used to provide funding for
11 the Physician Volunteer Program provided for under this article.

12 (b) All moneys in the Medically Underserved Account contained
13 within the Contingent Fund of the Medical Board of California
14 shall be transferred to the Medically Underserved Account for
15 Physicians on July 1, 2006.

16 (c) Funds in the account shall be used to repay loans as follows
17 per agreements made with physicians:

18 (1) Funds paid out for loan repayment may have a funding match
19 from foundations or other private sources.

20 (2) Loan repayments may not exceed one hundred five thousand
21 dollars (\$105,000) per individual licensed physician.

22 (3) Loan repayments may not exceed the amount of the
23 educational loans incurred by the physician participant.

24 (d) Notwithstanding Section 11105 of the Government Code,
25 effective January 1, 2006, the foundation may seek and receive
26 matching funds from foundations and private sources to be placed
27 in the account. "Matching funds" shall not be construed to be
28 limited to a dollar-for-dollar match of funds.

29 (e) Funds placed in the account for purposes of this article,
30 including funds received pursuant to subdivision (d), are,
31 notwithstanding Section 13340 of the Government Code,
32 continuously appropriated for the repayment of loans. *This*
33 *subdivision shall not apply to funds placed in the account pursuant*
34 *to Section 1341.45.*

35 (f) The account shall also be used to pay for the cost of
36 administering the program and for any other purpose authorized
37 by this article. The costs for administration of the program may
38 be up to 5 percent of the total state appropriation for the program
39 and shall be subject to review and approval annually through the

- 1 state budget process. This limitation shall only apply to the state
- 2 appropriation for the program.
- 3 (g) The office and the foundation shall manage the account
- 4 established by this section prudently in accordance with the other
- 5 provisions of law.

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1394
Author: Lowenthal
Bill Date: July 2, 2008, amended
Subject: Lapses of Consciousness: reports to DMV
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would authorize a physician to report to the Department of Motor Vehicles (DMV) specified information relating to a patient whom the physician has diagnosed as having suffered a lapse of consciousness. This would be reported if the physician reasonably believes that reporting the patient will serve the public interest. This bill exempts physicians from civil and criminal liability for making these reports. The DMV would be required, upon receiving a report from a physician pursuant to this bill, to reexamine the person's qualifications to operate a vehicle and make a determination whether to restrict, make subject to terms and conditions of probation, revoke, or suspend a license based on the assessment by the reporting physician.

ANALYSIS:

Current law requires physicians to report in writing immediately to the local health officer any patient at least 14 years of age or older who the physician has diagnosed as having a disorder characterized by lapses of consciousness. The Department of Public Health (DPH) defines disorders characterized by lapses of consciousness. The local health officers are responsible for reporting the information received from physicians regarding patient diagnoses of disorders characterized by lapses of consciousness to the DMV.

This bill would instead require physicians to report directly to the DMV the specified information relating to patients whom the physician has diagnosed as having suffered a lapse of consciousness. The physician only need report if, in his or her professional judgment, the risk of reoccurrence. Thus reporting the patient will serve the public interest.

The bill specifies conditions when reporting is not necessary.

In addition, this bill would require physicians to report to the DMV, in writing, regarding patients the physician has diagnosed with Alzheimer's disease and another dementia disorder.

This bill would exempt physician from civil and criminal liability for making a report authorized or required by this bill.

The provisions of this bill would commence January 1, 2010 and the DMV would be required to develop physician reporting forms on or before January 1, 2010 and adopt regulations by January 1, 2010 that define disorders characterized by recurrent lapses of consciousness and listing those disorders that do not require reporting under this bill.

Amendments to this bill would require the DMV to give primary consideration to the evaluation and assessment provided by the reporting physician and would authorize the DMV to rely on other specified factors and other forms of examination, including a road examination under specified circumstances. Amendments also require the DMV to include on the reporting form a space for the reporting physician to state whether, in his or her opinion, the patient's medical condition may affect safe driving.

FISCAL: None

POSITION: Support

AMENDED IN ASSEMBLY JULY 2, 2008
AMENDED IN ASSEMBLY JUNE 17, 2008
AMENDED IN SENATE APRIL 29, 2008
AMENDED IN SENATE APRIL 15, 2008
AMENDED IN SENATE APRIL 3, 2008

SENATE BILL

No. 1394

Introduced by Senator Lowenthal

February 21, 2008

An act to amend and repeal Section 103900 of the Health and Safety Code, and to amend Section 12818 of, and to add Article 6 (commencing with Section 13010) to Chapter 1 of Division 6 of, the Vehicle Code, relating to lapses in consciousness.

LEGISLATIVE COUNSEL'S DIGEST

SB 1394, as amended, Lowenthal. Lapses of consciousness: reports to the Department of Motor Vehicles.

Under existing law, a physician and surgeon is required to report in writing immediately to the local health officer, the name, date of birth, and address of every patient at least 14 years of age or older whom the physician and surgeon has diagnosed as having a disorder characterized by lapses of consciousness. Existing law requires the State Department of Public Health, in cooperation with the Department of Motor Vehicles, to define disorders characterized by lapses of consciousness, and to include within the defined disorders Alzheimer's disease and related disorders that are severe enough to be likely to impair a person's ability to operate a motor vehicle. Existing law further requires the local health

officer to provide this information to the Department of Motor Vehicles, for the information of that department in enforcing the Vehicle Code.

This bill would repeal these provisions on January 1, 2010, and, instead, would authorize a physician and surgeon to report to the Department of Motor Vehicles (DMV), in good faith, specified information relating to a patient at least 15 years of age, or 14 years of age if the patient has a junior permit, whom the physician and surgeon has diagnosed as having suffered a lapse of consciousness, if the physician and surgeon reasonably believes that reporting the patient will serve the public interest.

This bill, commencing January 1, 2010, would require a physician and surgeon to report specified information to the DMV, in writing, regarding certain patients the physician and surgeon has diagnosed with Alzheimer's disease or another dementia disorder, or with a disorder characterized by lapses of consciousness within the previous 6 months, as specified. The bill would excuse a physician and surgeon from these mandatory reporting requirements relating to lapse of consciousness disorders under designated circumstances.

This bill would exempt a physician and surgeon from civil and criminal liability for making a report authorized or required by the bill. The bill, commencing January 1, 2010, would require the DMV, upon receipt of a report made pursuant to the bill, to reexamine the person's qualifications to operate a vehicle, as prescribed, and make a determination whether to restrict, make subject to terms and conditions of probation, revoke, or suspend that person's license ~~based on the evaluation, reexamination, and assessment provided by the reporting physician.~~ *The bill, with regard to making that determination, would require the DMV to give primary consideration to the evaluation and assessment provided by the reporting physician and would authorize the DMV to rely on other specified factors and other forms of examination, including a road examination under specified circumstances.*

This bill would require the DMV, in consultation with appropriate professional medical organizations, to develop physician reporting forms on or before January 1, 2010, and, in cooperation with the State Department of Public Health and in consultation with appropriate professional medical organizations, to adopt regulations by January 1, 2010, defining disorders characterized by recurrent lapses of consciousness and listing those disorders that do not require reporting under the bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 103900 of the Health and Safety Code
2 is amended to read:

3 103900. (a) Every physician and surgeon shall report
4 immediately to the local health officer in writing, the name, date
5 of birth, and address of every patient at least 14 years of age or
6 older whom the physician and surgeon has diagnosed as having a
7 case of a disorder characterized by lapses of consciousness.
8 However, if a physician and surgeon reasonably and in good faith
9 believes that the reporting of a patient will serve the public interest,
10 he or she may report a patient's condition even if it may not be
11 required under the department's definition of disorders
12 characterized by lapses of consciousness pursuant to subdivision
13 (d).

14 (b) The local health officer shall report in writing to the
15 Department of Motor Vehicles the name, age, and address of every
16 person reported to it as a case of a disorder characterized by lapses
17 of consciousness.

18 (c) These reports shall be for the information of the Department
19 of Motor Vehicles in enforcing the Vehicle Code, and shall be
20 kept confidential and used solely for the purpose of determining
21 the eligibility of any person to operate a motor vehicle on the
22 highways of this state.

23 (d) The department, in cooperation with the Department of
24 Motor Vehicles, shall define disorders characterized by lapses of
25 consciousness based upon existing clinical standards for that
26 definition for purposes of this section and shall include Alzheimer's
27 disease and those related disorders that are severe enough to be
28 likely to impair a person's ability to operate a motor vehicle in the
29 definition. The department, in cooperation with the Department
30 of Motor Vehicles, shall list those circumstances that shall not
31 require reporting pursuant to subdivision (a) because the patient
32 is unable to ever operate a motor vehicle or is otherwise unlikely
33 to represent a danger that requires reporting. The department shall
34 consult with professional medical organizations whose members
35 have specific expertise in the diagnosis and treatment of those

1 disorders in the development of the definition of what constitutes
2 a disorder characterized by lapses of consciousness as well as
3 definitions of functional severity to guide reporting so that
4 diagnosed cases reported pursuant to this section are only those
5 where there is reason to believe that the patients' conditions are
6 likely to impair their ability to operate a motor vehicle. The
7 department shall complete the definition on or before January 1,
8 1992.

9 (e) The Department of Motor Vehicles shall, in consultation
10 with the professional medical organizations specified in subdivision
11 (d), develop guidelines designed to enhance the monitoring of
12 patients affected with disorders specified in this section in order
13 to assist with the patients' compliance with restrictions imposed
14 by the Department of Motor Vehicles on the patients' licenses to
15 operate a motor vehicle. The guidelines shall be completed on or
16 before January 1, 1992.

17 (f) A physician and surgeon who reports a patient diagnosed as
18 a case of a disorder characterized by lapses of consciousness
19 pursuant to this section shall not be civilly or criminally liable to
20 any patient for making any report required or authorized by this
21 section.

22 (g) This section shall remain in effect only until January 1, 2010,
23 and as of that date is repealed, unless a later enacted statute, that
24 is enacted before January 1, 2010, deletes or extends that date.

25 SEC. 2. Section 12818 of the Vehicle Code, as amended by
26 Section 13 of Chapter 985 of the Statutes of 2000, is amended to
27 read:

28 12818. (a) Upon receipt of a request for reexamination and
29 presentation of a legible copy of a notice of reexamination by a
30 person issued the notice pursuant to Section 21061, or upon receipt
31 of a report from a local health officer issued pursuant to subdivision
32 (b) of Section 103900 of the Health and Safety Code, the
33 department shall reexamine the person's qualifications to operate
34 a motor vehicle, including a demonstration of the person's ability
35 to operate a motor vehicle as described in Section 12804.9.

36 (b) Based on the department's reexamination of the person's
37 qualifications pursuant to subdivision (a), the department shall
38 determine if either of the following actions should be taken:

1 (1) Suspend or revoke the driving privilege of that person if the
2 department finds that any of the grounds exist which authorize the
3 refusal to issue a license.

4 (2) Restrict, make subject to terms and conditions of probation,
5 suspend, or revoke the driving privilege of that person based upon
6 the records of the department as provided in Chapter 3
7 (commencing with Section 13800).

8 (c) As an alternative to subdivision (a), the department may
9 suspend or revoke the person's driving privilege as provided under
10 Article 2 (commencing with Section 13950) of Chapter 3.

11 (d) Upon request, the department shall notify the law
12 enforcement agency which employs the traffic officer who issued
13 the notice of reexamination described in subdivision (a) of the
14 results of the reexamination.

15 (e) This section shall remain in effect only until January 1, 2010,
16 and as of that date is repealed, unless a later enacted statute, that
17 is enacted before January 1, 2010, deletes or extends that date.

18 SEC. 3. Section 12818 of the Vehicle Code, as added by
19 Section 14 of Chapter 985 of the Statutes of 2000, is amended to
20 read:

21 12818. (a) Upon receipt of a request for reexamination and
22 presentation of a legible copy of a notice of reexamination by a
23 person issued the notice pursuant to Section 21061, the department
24 shall reexamine the person's qualifications to operate a motor
25 vehicle, including a demonstration of the person's ability to operate
26 a motor vehicle as described in Section 12804.9.

27 (b) Based on the department's reexamination of the person's
28 qualifications pursuant to subdivision (a), the department shall
29 determine if either of the following actions should be taken:

30 (1) Suspend or revoke the driving privilege of that person if the
31 department finds that any of the grounds exist which authorize the
32 refusal to issue a license.

33 (2) Restrict, make subject to terms and conditions of probation,
34 suspend, or revoke the driving privilege of that person based upon
35 the records of the department as provided in Chapter 3
36 (commencing with Section 13800).

37 (c) As an alternative to subdivision (a), the department may
38 suspend or revoke the person's driving privilege as provided under
39 Article 2 (commencing with Section 13950) of Chapter 3.

1 (d) Upon request, the department shall notify the law
2 enforcement agency that employs the traffic officer who issued
3 the notice of reexamination of the results of the reexamination.

4 (e) Upon receipt of a report made pursuant to Section 13010 or
5 13011, the department shall reexamine the reported person's
6 qualifications to operate a motor vehicle, including requiring a
7 road examination pursuant to Section 12804.9. The department
8 shall make a determination to restrict, make subject to terms and
9 conditions of probation, revoke, or suspend a license ~~based upon~~
10 *and, in making that determination, the department shall give*
11 *primary consideration to the evaluation and assessment provided*
12 *by the reporting physician and ~~surgeon~~, surgeon. The department*
13 *may also rely on other forms of examination, including a road*
14 *examination pursuant to Section 12804.9, when the particular*
15 *health circumstances of the reported person warrant that*
16 *examination, and the factors enumerated in Section 110.01 of Title*
17 *13 of the California Code of Regulations in making that*
18 *determination.*

19 (f) This section shall become operative on January 1, 2010.

20 SEC. 4. Article 6 (commencing with Section 13010) is added
21 to Chapter 1 of Division 6 of the Vehicle Code, to read:

22
23 Article 6. Physician and Surgeon Reporting of Medical
24 Conditions
25

26 13010. (a) A physician and surgeon shall report immediately
27 to the department, in writing, the name, date of birth, and address
28 of every patient at least 15 years of age, or 14 years of age if the
29 patient has a junior permit, whom the physician and surgeon has
30 diagnosed with Alzheimer's disease or another dementia disorder;
31 or the physician and surgeon has diagnosed as suffering from a
32 single lapse of consciousness within the previous six months, if
33 the patient suffers from a disorder identified in Section 2806 of
34 Title 17 of the California Code of Regulations, and the physician
35 and surgeon believes, in his or her professional judgment, that the
36 risk of recurrence is sufficient to pose a threat to public safety; or
37 the physician and surgeon has diagnosed the patient as previously
38 suffering multiple lapses of consciousness, and whose medical
39 condition is identified in Section 2806 of Title 17 of the California
40 Code of Regulations, if substantial medical evidence suggests a

1 recurrence of a lapse of consciousness or that the condition
2 adversely affects the patient's ability to operate a motor vehicle.

3 (b) (1) Except as provided in paragraph (2), a physician and
4 surgeon is not required to make a report pursuant to this section
5 if any of the following occurs:

6 (A) Within the previous six months, the physician and surgeon
7 previously made a report pursuant to this section for this patient,
8 and the condition has not substantially changed.

9 (B) Within the previous six months, the patient's condition was
10 initially diagnosed by another physician and surgeon, and the
11 physician and surgeon has knowledge that the prior physician and
12 surgeon either determined that a report was not required under this
13 chapter, or made a report to the department, unless there is
14 substantial medical evidence that the condition has substantially
15 changed and may adversely affect the person's ability to drive.

16 (C) The physician and surgeon making the initial diagnosis,
17 relying on substantial medical evidence, determines both of the
18 following:

19 (i) That the disorder can and likely will be controlled and
20 stabilized within 30 days of the initial diagnosis by medication,
21 therapy, surgery, a restriction on activities, or devices, and the
22 treatment has been prescribed, administered, or referred.

23 (ii) That the patient's condition during the 30-day period does
24 not pose an undue risk to public safety while operating a motor
25 vehicle.

26 (2) If, during the 30-day period described in subparagraph (C)
27 of paragraph (1), the physician and surgeon determines that the
28 patient poses an imminent risk to public safety while operating a
29 motor vehicle or the patient's impairment or disorder has not been
30 controlled and stabilized at the conclusion of the 30-day period
31 described in subparagraph (C) of paragraph (1), the physician and
32 surgeon shall report immediately to the department in accordance
33 with subdivision (a).

34 (c) A physician and surgeon shall not be civilly or criminally
35 liable to the reported patient for making any report required or
36 authorized by this section.

37 (d) For purposes of this section, "disorders characterized by
38 lapses of consciousness" means those disorders defined pursuant
39 to paragraph (1) of subdivision (a) of Section 13012.

40 (e) This section shall become operative on January 1, 2010.

1 13011. (a) A physician and surgeon may report immediately
2 to the Department of Motor Vehicles, in writing, the name, date
3 of birth, and address of every patient at least 15 years of age or
4 older, or 14 years of age if the person has a junior permit, whom
5 the physician and surgeon has diagnosed as having a disorder
6 characterized by lapses of consciousness, if a physician and surgeon
7 reasonably and in good faith believes that reporting the patient
8 will serve the public interest. The physician and surgeon may report
9 a patient's condition even if it may not be required under the
10 department's definition of disorders characterized by lapses of
11 consciousness pursuant to this article.

12 (b) A physician and surgeon who reports a patient pursuant to
13 this article shall contemporaneously complete and transmit to the
14 department the form prepared by the department for this purpose,
15 and shall address each of the factors specified in Section 110.01
16 of Title 13 of the California Code of Regulations of which the
17 physician and surgeon has knowledge.

18 (c) The reports transmitted pursuant to this article shall be for
19 use by the department only, and shall be kept confidential and used
20 solely by the department for the purpose of determining the
21 eligibility of any person to operate a motor vehicle on the highways
22 of this state, or for the purpose of a bona fide research project, if
23 the data is solely provided by the department in anonymous form.

24 (d) A physician and surgeon shall not be civilly or criminally
25 liable to the reported patient for making any report required or
26 authorized by this section.

27 (e) For purposes of this section, "disorders characterized by
28 lapses of consciousness" shall be those disorders defined pursuant
29 to paragraph (1) of subdivision (a) of Section 13012.

30 (f) This section shall become operative on January 1, 2010.

31 13012. (a) The department, in cooperation with the State
32 Department of Public Health, by January 1, 2010, shall adopt
33 regulations that do all of the following:

34 (1) Define disorders characterized by recurrent lapses of
35 consciousness for purposes of this article, based upon existing
36 clinical standards for that definition, and include in that definition
37 Alzheimer's disease and those related disorders that are severe
38 enough to result in recurrent lapses of consciousness and are likely
39 to impair a person's ability to operate a motor vehicle.

1 (2) List circumstances that shall not require reporting pursuant
2 to Section 13011, because the patient is unable to ever operate a
3 motor vehicle or is otherwise unlikely to represent a danger that
4 requires reporting.

5 (3) List circumstances that do not require reporting pursuant to
6 this section.

7 (b) The department shall consult with professional medical
8 organizations whose members have specific expertise in treatment
9 of those impairments, conditions, and disorders, including, but not
10 limited to, those associations related to epilepsy, in the
11 development of any required definitions and necessary reporting
12 guidelines to ensure that cases reported pursuant to this section
13 are limited to impairments, conditions, and disorders that are
14 characterized by a recurrent lapse of consciousness and that
15 compromise a patient's ability to safely operate a motor vehicle.

16 (c) On or before January 1, 2010, the department, in consultation
17 with the professional medical organizations described in
18 subdivision (b), shall develop a physician reporting form that
19 incorporates the factors contained in Section 110.01 of Title 13 of
20 the California Code of Regulations. *The form shall contain a space*
21 *for the reporting physician and surgeon to state whether, in his*
22 *or her opinion, the patient's medical condition may affect safe*
23 *driving.* The form shall be made available on the department's
24 official Internet Web site for use by all physicians and surgeons.

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1406
Author: Correa
Bill Date: July 1, 2008, amended
Subject: Optometry
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would allow an optometrist to diagnosis and treat diseases of the eye, to prescribe lenses or devices that incorporate a medication or therapy, and to perform nonintraorbital injections. The bill would further allow an optometrist who graduated from an accredited school of optometry on or after May 1, 2000, to perform lacrimal irrigation and dilation procedures without additional certification.

ANALYSIS:

This bill would expand the scope of practice of optometrists, allowing those who are certified to use therapeutic pharmaceutical agents to treat glaucoma, to order any test or procedure necessary for the diagnosis of conditions or diseases of the eye or adnexa, to perform punctual occlusion by cautery, to prescribe lenses or devices that incorporate a medication or therapy that the optometrist is certified to prescribe or provide, to use sharp instruments within the central three millimeters of the cornea, to probe the nasal lacrimal tract in patients over 12 years of age, and to perform nonintraorbital injections. The bill would further allow an optometrist who graduated from an accredited school of optometry on or after May 1, 2000, to perform lacrimal irrigation and dilation procedures without additional certification.

The procedures necessary for the diagnosis or treatment of a condition of the eye or visual system may include biopsies not requiring sutures, corneal scraping with cultures, debridement, nonintraorbital injections, skin lesion removal, removal of skin tags, shaving of epidermal or dermal lesions, stromal micropuncture, suture removal, with prior consultation, treatment or removal of lymphatic or sebaceous cysts, ordering of smears, cultures, sensitivities, complete blood count, mycobacterial culture, acid fast stain, and urinalysis, and other tests or procedures.

The California Medical Association (CMA) has an "oppose unless amended" position on this bill. CMA notes that this bill would allow optometrists to make medical diagnoses and perform procedures without the appropriate education, training, or oversight. The organization notes that in the interest of patient safety the independent decisions of patient treatment and surgical interventions should be practiced by those with the proven appropriate level of education and training. CMA's primary concern is that the regulatory authority ultimately be placed with the Medical Board (Board) because this legislation would allow optometrists to practice medicine. CMA notes that the structure should be similar to that established for dentists that are performing oral surgery.

The California Academy of Eye Physicians and Surgeons, in opposition to this bill, expresses concerns that this bill allows optometrists, who have not been to medical school, to independently diagnose and treat patients suffering from such chronic eye diseases as glaucoma, eye infections associated with AIDS, and diseased eyes in children. In addition, they note that this legislation allows optometrists to order any laboratory test or procedure and to perform any procedures (including surgical procedures) in order to diagnose and treat eye conditions. Finally, they are concerned that this bill allows optometrists to use a wide range of additional medications, including oral steroids and injectable drugs for the treatment of eye conditions.

Based on these concerns the author is working on amendments.

FISCAL: None

POSITION: Recommendation: Oppose unless amended to provide for a permit per the process designed for dentists performing cosmetic surgery.

July 16, 2008

AMENDED IN ASSEMBLY JULY 1, 2008
AMENDED IN ASSEMBLY JUNE 19, 2008
AMENDED IN SENATE MAY 27, 2008
AMENDED IN SENATE MAY 23, 2008
AMENDED IN SENATE APRIL 22, 2008

SENATE BILL

No. 1406

Introduced by Senators Correa and Aanestad

February 21, 2008

An act to amend Sections 3041 and 3152 of the Business and Professions Code, relating to optometry.

LEGISLATIVE COUNSEL'S DIGEST

SB 1406, as amended, Correa. Optometry.

Existing law, the Optometry Practice Act, creates the State Board of Optometry, which licenses optometrists and regulates their practice. The act defines the practice of optometry as including the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system. The act also prescribes certain eye or eye appendage conditions which an optometrist who is certified to use therapeutic pharmaceutical agents may diagnose and treat, as specified and subject to certain limitations, and requires additional certification for the performance of primary open-angle glaucoma and lacrimal irrigation and dilation procedures, respectively.

This bill would revise and recast those provisions to further allow an optometrist who is certified to use therapeutic pharmaceutical agents to, among others, treat glaucoma, as defined, under specified

certification standards, order any test or procedure necessary for the diagnosis of conditions or diseases of the eye or adnexa, to perform ~~punctal~~ *punctal* occlusion by cautery, to prescribe lenses or devices that incorporate a medication or therapy the optometrist is certified to prescribe or provide, to use sharp instruments within the central 3 millimeters of the cornea, ~~to probe the nasal lacrimal tract in patients over 12 years of age,~~ and to perform nonintraorbital injections. The bill would further allow an optometrist who graduated from an accredited school of optometry on or after May 1, 2000, to perform lacrimal irrigation and dilation procedures without additional certification. The bill would also make other changes with regard to the circumstances under which an ophthalmologist *or an appropriate physician and surgeon or other health care provider* is required to be consulted with, or patients referred to, and to certain age requirements related to treatment or diagnosis, as specified. The bill would further make a conforming change to a related provision, *and would make a statement of legislative intent, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3041 of the Business and Professions
- 2 Code is amended to read:
- 3 3041. (a) The practice of optometry includes the prevention
- 4 and diagnosis of disorders and dysfunctions of the visual system,
- 5 and the treatment and management of certain disorders and
- 6 dysfunctions of the visual system, as well as the provision of
- 7 rehabilitative optometric services, and is the doing of any or all of
- 8 the following:
- 9 (1) The examination of the human eye or eyes, or its or their
- 10 appendages, and the analysis of the human vision system, either
- 11 subjectively or objectively.
- 12 (2) The determination of the powers or range of human vision
- 13 and the accommodative and refractive states of the human eye or
- 14 eyes, including the scope of its or their functions and general
- 15 condition.
- 16 (3) The prescribing or directing the use of, or using, any optical
- 17 device in connection with ocular exercises, visual training, vision
- 18 training, or orthoptics.

1 (4) The prescribing of contact and spectacle lenses for, or the
2 fitting or adaptation of contact and spectacle lenses to, the human
3 eye, including lenses that may be classified as drugs or devices by
4 any law of the United States or of this state.

5 (5) The use of *topical* pharmaceutical agents for the purpose of
6 the examination of the human eye or eyes for any disease or
7 pathological condition.

8 (b) (1) An optometrist who is certified to use therapeutic
9 pharmaceutical agents, pursuant to Section 3041.3, may also
10 diagnose and treat the human eye or eyes, or any of its appendages,
11 for all of the following conditions:

12 (A) Through medical treatment, infections of the anterior
13 segment and adnexa, excluding the lacrimal gland, the lacrimal
14 drainage system and the sclera in patients under 12 years of age.

15 (B) Ocular allergies of the anterior segment and adnexa.

16 (C) Ocular inflammation, limited to inflammation resulting from
17 traumatic iritis, peripheral corneal inflammatory keratitis,
18 episcleritis, and unilateral nonrecurrent nongranulomatous
19 idiopathic iritis in patients over 12 years of age. Unilateral
20 nongranulomatous idiopathic iritis recurring within one year of
21 the initial occurrence shall be referred to an ophthalmologist. An
22 optometrist shall consult with an ophthalmologist or appropriate
23 ~~health-care-provider~~ *physician and surgeon* if a patient has a
24 recurrent case of episcleritis within one year of the initial
25 occurrence. An optometrist shall consult with an ophthalmologist
26 or appropriate ~~health-care-provider~~ *physician and surgeon* if a
27 patient has a recurrent case of peripheral corneal inflammatory
28 keratitis within one year of the initial occurrence.

29 (D) Traumatic or recurrent conjunctival or corneal abrasions
30 and erosions.

31 (E) Corneal surface disease and dry eyes.

32 (F) Ocular pain associated with conditions optometrists are
33 authorized to treat.

34 (G) Pursuant to subdivision (f), glaucoma in patients over 18
35 years of age, as described in subdivision (j).

36 (2) For purposes of this section, “treat” means the use of
37 therapeutic pharmaceutical agents, as described in subdivision (c),
38 and the procedures described in subdivision (e).

39 (c) In diagnosing and treating the conditions listed in subdivision
40 (b), an optometrist certified to use therapeutic pharmaceutical

1 agents pursuant to Section 3041.3, may use all of the following
2 therapeutic pharmaceutical agents:

3 (1) Pharmaceutical agents as described in paragraph (5) of
4 subdivision (a), as well as topical miotics.

5 (2) Topical lubricants.

6 (3) Antiallergy agents.

7 (4) Topical and oral antiinflammatories. In using steroid
8 medication for:

9 (A) Unilateral nonrecurrent nongranulomatous idiopathic iritis
10 or episcleritis, an optometrist shall consult with an ophthalmologist
11 or other appropriate health care provider if the patient's condition
12 worsens 72 hours after the diagnosis, or if the patient's condition
13 has not resolved three weeks after diagnosis. If the patient is still
14 receiving medication for these conditions six weeks after diagnosis,
15 the optometrist shall refer the patient to an ophthalmologist or
16 other appropriate health care provider.

17 (B) Peripheral corneal inflammatory keratitis, excluding
18 Moorens and Terriens diseases, an optometrist shall consult with
19 an ophthalmologist or other appropriate health care provider if the
20 patient's condition worsens 72 hours after diagnosis.

21 (C) Traumatic iritis, an optometrist shall consult with an
22 ophthalmologist ~~or other appropriate health care provider~~
23 *appropriate physician and surgeon* if the patient's condition
24 worsens 72 hours after diagnosis and shall refer the patient to an
25 ophthalmologist ~~or other appropriate health care provider~~
26 *appropriate physician and surgeon* if the patient's condition has
27 not resolved one week after diagnosis.

28 (5) Topical antibiotic agents.

29 (6) Topical hyperosmotics.

30 (7) Topical and oral antiglaucoma agents pursuant to the
31 certification process defined in subdivision (f).

32 (A) The optometrist shall ~~consult with, or refer the patient to,~~
33 *refer the patient to* an ophthalmologist if requested by the patient
34 or if angle closure glaucoma develops.

35 (B) If the glaucoma patient also has diabetes, the optometrist
36 shall ~~inform, in writing,~~ *consult with* the physician treating the
37 patient's diabetes in developing the glaucoma treatment plan and
38 shall inform the physician in writing of any changes in the patient's
39 glaucoma medication. ~~The physician shall provide written~~
40 ~~confirmation of these consultations and notifications.~~

1 (8) Nonprescription medications used for the rational treatment
2 of an ocular disorder.

3 (9) Oral antihistamines.

4 (10) Prescription oral nonsteroidal antiinflammatory agents.

5 (11) Oral antibiotics for medical treatment of ocular disease.

6 (A) If the patient has been diagnosed with a central corneal ulcer
7 and the central corneal ulcer has not improved 72 hours after
8 diagnosis, the optometrist shall refer the patient to an
9 ophthalmologist.

10 (B) If the patient has been diagnosed with preseptal cellulitis
11 or dacryocystitis and the condition has not improved 72 hours after
12 diagnosis, the optometrist shall refer the patient to an
13 ophthalmologist.

14 (12) Topical and oral antiviral medication for the medical
15 treatment of the following: herpes simplex viral keratitis, herpes
16 simplex viral conjunctivitis, and periocular herpes simplex viral
17 dermatitis; and varicella zoster viral keratitis, varicella zoster viral
18 conjunctivitis, and periocular varicella zoster viral dermatitis.

19 (A) If the patient has been diagnosed with herpes simplex
20 keratitis or varicella zoster viral keratitis and the patient's condition
21 has not improved seven days after diagnosis, the optometrist shall
22 refer the patient to an ophthalmologist. If a patient's condition has
23 not resolved three weeks after diagnosis, the optometrist shall refer
24 the patient to an ophthalmologist.

25 (B) If the patient has been diagnosed with herpes simplex viral
26 conjunctivitis, herpes simplex viral dermatitis, varicella zoster
27 viral conjunctivitis, or varicella zoster viral dermatitis, and if the
28 patient's condition worsens seven days after diagnosis, the
29 optometrist shall consult with an ophthalmologist. If the patient's
30 condition has not resolved three weeks after diagnosis, the
31 optometrist shall refer the patient to an ophthalmologist.

32 (13) Oral analgesics that are not controlled substances.

33 (14) Codeine with compounds and hydrocodone with
34 compounds as listed in the California Uniform Controlled
35 Substances Act (Section 11000 of the Health and Safety Code et
36 seq.) and the United States Uniform Controlled Substances Act
37 (21 U.S.C. Sec. 801 et seq.). The use of these agents shall be
38 limited to three days, with a referral to an ophthalmologist if the
39 pain persists.

(d) In any case where this chapter requires that an optometrist consult with an ophthalmologist, the optometrist shall maintain a written record in the patient's file of the information provided to the ophthalmologist, the ophthalmologist's response and any other relevant information. Upon the consulting ophthalmologist's request and with the patient's consent, the optometrist shall furnish a copy of the record to the ophthalmologist.

(e) An optometrist who is certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may also perform all of the following:

(1) Procedures necessary for the diagnosis or treatment of a condition of the eye or visual system, including, but not limited to:

- (A) Biopsies not requiring sutures.
- (B) Corneal scraping with cultures.
- (C) Debridement.
- (D) Epilation, including with cryo or electro cautery.
- (E) Nonintraorbital injections.
- ~~(F) Lacrimal probing, with or without dilation.~~
- ~~(G) Skin lesion removal.~~
- ~~(H)~~
- (F) Removal of skin tags.
- ~~(H)~~
- (G) Shaving of epidermal or dermal lesions.
- ~~(J)~~
- (H) Stromal micropuncture.
- ~~(K)~~
- (I) Suture removal, with prior consultation.
- ~~(L)~~
- (J) Treatment or removal of lymphatic or sebaceous cysts.

(2) Ordering of smears, cultures, sensitivities, complete blood count, mycobacterial culture, acid fast stain, urinalysis, and other tests or procedures necessary for the diagnosis of conditions or diseases of the eye or adnexa.

(3) Punctal occlusion by plugs and cautery, excluding laser, diathermy, cryotherapy, or other means constituting surgery as defined in this chapter.

(4) The prescription of therapeutic contact lenses, including lenses or devices that incorporate a medication or therapy the optometrist is certified to prescribe or provide.

1 (5) Removal of foreign bodies from the cornea, eyelid, and
2 conjunctiva. Corneal foreign bodies shall be nonperforating, be
3 no deeper than the midstroma, and require no surgical repair upon
4 removal.

5 (6) For patients over 12 years of age, lacrimal irrigation and
6 dilation, *excluding probing of the nasal lacrimal tract*. The board
7 shall certify any optometrist who graduated from an accredited
8 school of optometry before May 1, 2000, to perform this procedure
9 after submitting proof of satisfactory completion of 10 procedures
10 under the supervision of an ophthalmologist as confirmed by the
11 ophthalmologist. Any optometrist who graduated from an
12 accredited school of optometry on or after May 1, 2000, shall be
13 exempt from the certification requirement contained in this
14 paragraph.

15 (f) The board shall grant a certificate to an optometrist certified
16 pursuant to Section 3041.3 for the treatment of glaucoma, as
17 described in subdivision (j), in patients over 18 years of age after
18 the optometrist meets the following applicable requirements:

19 (1) For licensees who graduated from an accredited school of
20 optometry on or after May 1, 2008, submission of proof of
21 graduation from that institution.

22 (2) For licensees who were certified to treat glaucoma under
23 this chapter prior to January 1, 2009, submission of proof of
24 completion of that certification program.

25 (3) For licensees who graduated from an accredited school of
26 optometry on or after May 1, 2000, submission of proof of
27 satisfactory completion of not less than 12 hours in case
28 management of patients diagnosed with glaucoma.

29 (4) For licensees who have completed a didactic course of not
30 less than 24 hours in the diagnosis, pharmacological, and other
31 treatment and management of glaucoma developed by an accredited
32 school of optometry, submission of proof of satisfactory completion
33 of not less than 12 hours in case management of patients diagnosed
34 with glaucoma.

35 (5) For licensees not described in the preceding paragraphs,
36 submission of proof of satisfactory completion of a didactic course
37 of not less than 24 hours in the diagnosis, pharmacological, and
38 other treatment and management of glaucoma developed by an
39 accredited school of optometry, and not less than 12 hours in case
40 management of patients diagnosed with glaucoma.

1 (g) Any dispensing of a therapeutic pharmaceutical agent by an
2 optometrist shall be without charge.

3 (h) The practice of optometry does not include performing
4 surgery. "Surgery" means any procedure in which human tissue
5 is cut, altered, or otherwise infiltrated by mechanical or laser means
6 in a manner not specifically authorized by this chapter. Nothing
7 in this section shall limit an optometrist's authority to utilize
8 diagnostic ~~and therapeutic~~ laser and ultrasound technology within
9 his or her scope of practice.

10 (i) An optometrist licensed under this chapter is subject to the
11 provisions of Section 2290.5 for purposes of practicing
12 telemedicine.

13 (j) For purposes of this chapter, "glaucoma" means either of the
14 following:

15 (1) All primary ~~open-angle~~ *open-angle* glaucoma.

16 (2) All secondary ~~open-angle~~ *open-angle* glaucoma, excluding
17 irido-corneal endothelial syndrome and neovascular glaucoma.

18 (k) For purposes of reversal or stabilization, an optometrist shall
19 immediately refer any patient who has an acute attack of angle
20 closure to an ophthalmologist.

21 SEC. 2. Section 3152 of the Business and Professions Code is
22 amended to read:

23 3152. The amount of fees and penalties prescribed by this
24 chapter shall be established by the board in amounts not greater
25 than those specified in the following schedule:

26 (a) The fee for applicants applying for a license shall not exceed
27 two hundred seventy-five dollars (\$275).

28 (b) The fee for renewal of an optometric license shall not exceed
29 five hundred dollars (\$500).

30 (c) The annual fee for the renewal of a branch office license
31 shall not exceed seventy-five dollars (\$75).

32 (d) The fee for a branch office license shall not exceed
33 seventy-five dollars (\$75).

34 (e) The penalty for failure to pay the annual fee for renewal of
35 a branch office license shall not exceed twenty-five dollars (\$25).

36 (f) The fee for issuance of a license or upon change of name
37 authorized by law of a person holding a license under this chapter
38 shall not exceed twenty-five dollars (\$25).

39 (g) The delinquency fee for renewal of an optometric license
40 shall not exceed fifty dollars (\$50).

1 (h) The application fee for a certificate to treat lacrimal irrigation
2 and dilation shall not exceed fifty dollars (\$50).

3 (i) The application fee for a certificate to treat glaucoma shall
4 not exceed fifty dollars (\$50).

5 (j) The fee for approval of a continuing education course shall
6 not exceed one hundred dollars (\$100).

7 (k) The fee for issuance of a statement of licensure shall not
8 exceed forty dollars (\$40).

9 (l) The fee for biennial renewal of a statement of licensure shall
10 not exceed forty dollars (\$40).

11 (m) The delinquency fee for renewal of a statement of licensure
12 shall not exceed twenty dollars (\$20).

13 (n) The application fee for a fictitious name permit shall not
14 exceed fifty dollars (\$50).

15 (o) The renewal fee for a fictitious name permit shall not exceed
16 fifty dollars (\$50).

17 (p) The delinquency fee for renewal of a fictitious name permit
18 shall not exceed twenty-five dollars (\$25).

19 *SEC. 3. (a) It is the intent of the Legislature that interested*
20 *parties come to resolution on the following questions related to*
21 *proposed amendments to existing law made by this act:*

22 *(1) In paragraph (5) of subdivision (a) of Section 3041 of the*
23 *Business and Professions Code, whether it needs to be made clear*
24 *that optometrists certified to use only diagnostic pharmaceutical*
25 *agents may use only topical pharmaceutical agents for diagnostic*
26 *purposes.*

27 *(2) In subparagraph (C) of paragraph (1) of subdivision (b) of*
28 *Section 3041 of the Business and Professions Code, whether it*
29 *needs to be made clear that treatment of postsurgical ocular*
30 *inflammation in cases comanaged by the operating ophthalmologist*
31 *and optometrist is permitted.*

32 *(3) In paragraph (7) of subdivision (c) of Section 3041 of the*
33 *Business and Professions Code, whether it needs to be made clear*
34 *that glaucoma-certified optometrists may use oral glaucoma*
35 *therapeutic pharmaceutical agents only for the purpose of*
36 *reversing or stabilizing angle-closure glaucoma prior to immediate*
37 *referral, as specified in subdivision (k) of Section 3041 of the*
38 *Business and Professions Code.*

39 *(4) In subparagraph (A) of paragraph (1) of subdivision (e) of*
40 *Section 3041 of the Business and Professions Code, whether it*

1 *needs to be made clear that optometrists are authorized to perform*
2 *biopsies not requiring sutures for testing purposes to confirm*
3 *diagnoses.*
4 *(5) As provided in subparagraph (J) of paragraph (1) of*
5 *subdivision (e) of Section 3041 of the Business and Professions*
6 *Code, whether optometrists should be authorized to treat or remove*
7 *lymphatic or sebaceous cysts.*
8 *(b) It is the intent of the Legislature that interested parties come*
9 *to resolution on a collaborative process for certification of*
10 *optometrists by the State Board of Optometry described in*
11 *paragraphs (3), (4), and (5) as added to subdivision (f) of Section*
12 *3041 of the Business and Professions Code by this act, that both*
13 *ensures that the public will be protected and that qualified*
14 *applicants will be certified on an appropriate and timely basis.*